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EMPLOYMENT DISCRIMINATION—Friendship, Commerce and Navigation Treaties and Title VII

The United States Supreme Court has recently agreed to consider a novel and difficult question involving a conflict between a "friendship, commerce, and navigation" treaty¹ and a domestic civil rights statute.² Specifically, the Court will decide whether the 1953 Treaty of Friendship, Commerce, and Navigation between the United States and Japan³ provides a wholly owned Japanese subsidiary incorporated in the United States the absolute right to fill management level positions with Japanese nationals, irrespective of American laws prohibiting racial discrimination in employment.⁴ That the dispute is ripe for Supreme Court adjudication is evident from the interpretational conflicts that have arisen among federal agencies⁵ and, most recently, between the Second and Fifth Circuits.⁶ Japanese companies operating in the United States seek to rely on Article VIII(1) of the 1953 Treaty, which provides that "[n]ationals and companies of either Party shall be permitted to engage, within the territories of the other party, [managerial personnel] of their choice,"⁷ as a defense to charges of racially discriminatory employment practices. Because the United States is signatory to well over two dozen FCN treaties with similar "freedom of choice" provisions,⁸ a Supreme Court decision regarding the use of these treaties as a defense to charges of civil rights

¹ The term "treaty of friendship, commerce and navigation" [hereinafter FCN treaties] is used as a term of art to describe a basic accord which establishes a framework for private commerce between American citizens and citizens of other countries. Beginning with the Treaty of Amity and Commerce with France, Feb. 6, 1778, 8 Stat. 12, T.S. No. 83, the device has been utilized with certain variations designed to meet the exigencies of the day. See generally Walker, *Modern Treaties of Friendship, Commerce and Navigation*, 42 Minn. L. Rev. 805 (1958).

² *Avigliano v. Sumitomo Shoji America, Inc.*, 638 F.2d 552 (2d Cir.), cert. granted, 102 S. Ct. 501 (1981).

³ Treaty of Friendship, Commerce and Navigation, Apr. 2, 1953, United States-Japan, 4 U.S.T. 2063, T.I.A.S. No. 2863 [hereinafter cited as Japanese FCN Treaty].

⁴ 638 F.2d at 552.

⁵ For a discussion of contrasting interpretational opinions expressed by the Department of State, the Equal Employment Opportunity Commission and the treaty negotiators, see Note, *Spieß v. C. Itoh & Co. (America): Do U.S. Commercial Treaties Provide Foreign Corporations with an Immunity from U.S. Civil Rights Laws?* 6 N.C.J. Int'l L. & Com. Reg. 111, 114-18 (1980).

⁶ Compare *Avigliano*, supra note 2, with *Spieß v. C. Itoh & Co. (America)*, 643 F.2d 353 (5th Cir.), reh'g granted, 654 F.2d 302 (5th Cir. 1981). See also, *Linskey v. Heidelberg Eastern, Inc.*, 470 F. Supp. 1181 (E.D.N.Y. 1979).

⁷ Japanese FCN Treaty, supra note 3, art. VIII, para.1.

⁸ For a listing of FCN treaties with provisions similar to those in the Japanese FCN Treaty, see 8 U.S.C.A. § 1101, historical note (West 1970) and 1 Int'l Legal Mat. 92 (1962).

violations within the United States will have both domestic and international consequences.⁹

The case presently before the Court, *Avigliano v. Sumitomo Shoji America, Inc.*,¹⁰ began in the Southern District of New York in a suit against Sumitomo Shoji America (hereinafter Sumitomo), a New York-incorporated wholly owned subsidiary of a Japanese "integrated trading company."¹¹ Female employees of Sumitomo claimed that the company's practice of hiring only male Japanese nationals for management-level positions discriminated against them on the basis of sex and national origin in violation of Title VII of the 1964 Civil Rights Act.¹² Sumitomo sought dismissal on the grounds that the Japanese Treaty exempted Japanese trading companies and their wholly owned subsidiaries incorporated in the United States from application of Title VII.¹³ Without reaching the merits of this defense the district court denied Sumitomo's motion to dismiss based on the "more fundamental" issue presented, namely whether Sumitomo could, in the first instance, "invoke the aegis of the Treaty as sanction for its employment practices."¹⁴ Relying on Article XXII(3),¹⁵ the definitional section of the Treaty, the court concluded that Sumitomo is a company of the United States, not of Japan, and therefore has no standing to invoke the freedom of choice provision granted by Article VIII(1) of the Treaty.¹⁶

On interlocutory appeal, the Second Circuit held that Sumitomo could invoke Article VIII(1) of the Japanese Treaty but that the Treaty did not exempt Sumitomo from Title VII as far as executive personnel were concerned.¹⁷ The court found that to deny Sumitomo Treaty protection because it was operating as a locally incorporated subsidiary rather than a branch of its Japanese parent would overlook the Treaty's purpose of supporting foreign investment generally and would "disregard substance for form."¹⁸ Moreover, the court noted that such a treaty

⁹ See generally Schwartz, *Commercial Treaties and the American Civil Rights Laws: The Case of Japanese Employees*, 31 Stan. L. Rev. 947 (1979).

¹⁰ 638 F.2d 552 (2d Cir.), cert. granted, 102 S.Ct. 501 (1981).

¹¹ "Integrated trading companies" engage in the purchase and resale of goods for import and export markets. As of May 1978, there were fewer than a dozen such integrated trading companies although they account for more than fifty percent of Japan's imports and exports. *Avigliano v. Sumitomo Shoji America, Inc.*, 473 F. Supp. 506, 508 n.3 (S.D.N.Y. 1978).

¹² 42 U.S.C. §§ 2000e to 2000e-17 (1976 & Supp. III 1979).

¹³ 473 F. Supp. at 508. In addition, Sumitomo interposed four counterclaims alleging abuse of legal process and tortious interference with the operation of its business activities. *Id.* at 508-09, 514-16. These counterclaims are not relevant to the certified question presently before the Court on interlocutory appeal.

¹⁴ *Id.* at 509. The court did, however, dismiss plaintiff's claims based on the Thirteenth Amendment and on 42 U.S.C. § 2000e-5(k) (1976). *Id.* at 514, 515.

¹⁵ Article XXII(3) of the Japanese FCN Treaty, *supra* note 3, reads in pertinent part: "Companies constituted under the applicable laws and regulations within the territories of either Party shall be deemed companies thereof and shall have their juridical status recognized within the territories of the other Party."

¹⁶ 473 F. Supp. at 513.

¹⁷ 638 F.2d at 558.

¹⁸ *Id.* at 556.

construction could be easily circumvented by a foreign corporation if its United States subsidiaries were converted into branches.¹⁹ The court rejected the argument that three Treaty provisions which explicitly grant rights to subsidiaries²⁰ were intended to define the outer limits of subsidiaries' rights or to bar them from enjoying additional rights granted to branches. These were instances, the court reasoned, where extra protection was to be accorded subsidiaries in their capacity as "companies of either Party."²¹ Article XXII(3) of the Japanese Treaty defines a company's nationality for the purpose of recognizing its status as a legal entity but not for the purpose of restricting substantive rights granted elsewhere in the Treaty.²² Thus, the court concluded Sumitomo was properly classified as a Japanese company for the purpose of invoking the substantive provisions of the Treaty.²³

In construing the freedom of choice language of Article VIII(1),²⁴ Judge Mansfield pointed to the prevailing practice of the United States and foreign countries at the time the Treaty was negotiated, of severely restricting the employment of noncitizens. The Treaty drafters inserted Article VIII(1), according to Judge Mansfield, to "exempt companies operating abroad from local legislation restricting the employment of noncitizens"²⁵ and "to facilitate a party's employment of its own nationals to the extent necessary to insure its operational success in the host country."²⁶ A foreign company's right to hire executives "of [its] choice," however, does not give Japanese firms operating in the United States a license to violate civil rights laws. If Sumitomo seeks an exemption from laws prohibiting discrimination in employment, then the burden is on the company to demonstrate a bona fide occupational qualification²⁷

¹⁹ *Id.*

²⁰ Japanese FCN Treaty, *supra* note 3, arts. VI(4), VII(1), VII(4).

²¹ 638 F.2d at 556. To hold otherwise, the court stated, would create a "crazy quilt pattern" which would entitle subsidiaries to only minor rights compared to the broad rights enjoyed by branches under the treaty. "It would be illogical to infer that the drafters . . . intended . . . to act in such a haphazard way." *Id.*

²² *Id.* at 557.

²³ *Id.* at 558.

²⁴ Article VIII(1) gives Japanese companies operating in the United States the right to hire "accountants and other technical experts, executive personnel, attorneys, agents, and other specialists of their choice." Japanese FCN Treaty, *supra* note 3, art. VIII.

²⁵ 638 F.2d at 559, citing Walker, *Treaties for the Encouragement and Protection of Foreign Investment: Present United States Practice*, 5 Am. J. Comp. L. 229, 234 (1956).

²⁶ 638 F.2d at 559.

²⁷ Section 703(a) of the 1964 Civil Rights Act prohibits unlawful employment practices based on race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2 (1976). The scope of § 703(a) is qualified by § 703(e) which states:

(e) Notwithstanding any other provision of this subchapter,

(1) It shall not be unlawful employment practice for an employer to hire and employ employees . . . on the bases of his religion, sex, or national origin in those certain circumstances where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business enterprise. . . .

Id. § 2000e-2(e).

(BFOQ) exception to Title VII.²⁸ As applied to Japanese companies enjoying rights under the Treaty, a BFOQ exemption from Title VII must be construed "in a manner that will give due weight to the Treaty rights and unique requirements of a Japanese company doing business in the United States."²⁹ The Second Circuit remanded the case to the district court to determine whether some or all of Sumitomo's executive positions qualified for this BFOQ status.³⁰

In *Spieess v. C. Itoh & Co. (America)*,³¹ the Fifth Circuit was confronted with a case substantially similar to *Avigliano*. Defendant Itoh is a wholly owned Japanese subsidiary incorporated in the United States, and also proffered the Japanese Treaty as a defense to a Title VII action.³² The *Spieess* decision concurs with *Avigliano* as to the availability of the substantive provisions of the Treaty to Japanese subsidiaries incorporated in the United States.³³ The Fifth Circuit departed from *Avigliano*, however, in delimiting the scope of Article VIII(1), and held that the Japanese Treaty afforded American subsidiaries of Japanese companies the absolute right to discriminate in favor of Japanese nationals.³⁴ Conceding that the overriding goal of the Japanese Treaty was to provide "national treatment,"³⁵ that is, treatment similar to that accorded domestic companies, to Japanese businesses operating in the United States, the court nevertheless stated that the Article VIII(1) "of their choice"

²⁸ 638 F.2d at 559. The court advanced a special rule applicable to firms operating under FCN treaties that would give foreign companies latitude in meeting the bona fide occupational qualification exception of Title VII. Relevant considerations cited by the court include: "(1) Japanese linguistic and cultural skills; (2) knowledge of Japanese products, markets, customs, and business practices; (3) familiarity with the personnel and workings of the principal or parent enterprise in Japan; and (4) acceptability to those persons with whom the company or branch does business." *Id.*

²⁹ 638 F.2d at 559.

³⁰ *Id.*

³¹ 643 F.2d 353 (5th Cir. 1981), *petit. for cert.*, 50 U.S.L.W. 3449 (Nov. 9, 1981); *dis. purs.* to *Rule* 53, 50 U.S.L.W. 3550 (Jan. 5, 1982) (No. 81-938).

³² Employees of C. Itoh-America, a wholly owned Japanese subsidiary incorporated in New York, filed a Title VII action against their employer who asserted that Article VIII(1) of the Japanese Treaty cloaked the company with an absolute immunity from American discrimination laws. 643 F.2d at 355.

The district court in *Spieess* relied primarily on "the plain meaning of Article XXII(3)" and concluded that C. Itoh-America had been "constituted under" the laws of the United States, was a company of the United States, and therefore could not invoke the Article VIII freedom of choice provision of the Treaty. 469 F. Supp. 1, 4 (S.D. Tex. 1979). Acknowledging the novelty of the issue presented, the district court certified its decision to the Fifth Circuit Court of Appeals. *Id.* at 10.

³³ The Fifth Circuit noted that it would be unreasonable, albeit literal, to draw a distinction between a subsidiary and a branch. Thus, C. Itoh-America could "assert all rights extended to 'companies of either Party' by the Japanese Treaty." 643 F.2d at 359.

³⁴ *Id.* at 362.

³⁵ National treatment is one of two "contingent standards" delimiting the rights accorded foreign nationals operating in the host country. Seen as the more desirable standard, national treatment guarantees foreign nationals the same protections afforded to native citizens. The "most-favored nation" standard, on the other hand, affords treatment as favorable as that enjoyed by the citizens of the most-favored foreign nation. Walker, *Modern Treaties of Friendship, Commerce and Navigation*, 42 Minn. L. Rev. 805, 811 (1958).

provision was intended to create an absolute rule permitting foreign nationals to control their overseas investments.³⁶ The court noted further that any qualification of the Treaty right, such as making it subject to the bona fide occupational qualification exemption of Title VII or as overriding state but not federal law,³⁷ would render Article VIII(1) "virtually meaningless."³⁸ Thus, the court concluded, the Treaty permits C. Itoh-America to discriminate unconditionally in favor of Japanese personnel for executive and technical positions.³⁹

These two cases present a critical conflict between the policies of promoting foreign trade through FCN treaties and advancing equal opportunity in employment through United States statutes. As part of the "supreme Law of the Land,"⁴⁰ and the primary instrument of civilized interaction among nations, treaties enjoy a uniquely important status under the law.⁴¹ By their nature, treaties attempt to articulate a common ground between differing cultures; it is important, therefore, that they be interpreted in a manner "consistent with the genuine shared expectations of the contracting parties."⁴² It is well documented that the Article VIII(1) right to free choice of technical and managerial personnel was inserted in the Japanese Treaty (and other post-World War II treaties) as a device to insure U.S. companies' control over their Japanese investments.⁴³ Consequently, Japanese companies have a legitimate reciprocal expectation regarding their investments in the United States by resort to the same provisions.⁴⁴ To deny Japanese companies the un-

³⁶ In contrast to contingent standards which define treatment of foreign nationals in relative terms, there are certain non-contingent or absolute rules designed to protect vital rights and privileges of foreign nationals in any situation, irrespective of the protection afforded the indigenous population of the host country. 643 F.2d at 360, citing Walker, *Modern Treaties*, supra note 35, at 811.

³⁷ C. Itoh-America argued that if Article VIII goes beyond national treatment it does so only to the extent of protecting Japanese companies from "ultranationalistic" state laws, but not from federal laws forbidding companies themselves from discriminating. Under this analysis, the Title VII exemption for bona fide occupational qualification would be broad enough to encompass any rights that could be legitimately asserted by Japanese corporations under the Treaty. 643 F.2d at 361.

³⁸ *Id.* at 362.

³⁹ *Id.*

⁴⁰ U.S. Const. art. VI, cl. II.

⁴¹ The Supreme Court has announced that it will make every effort to uphold treaty obligations and that such obligations will be deemed to supersede state law. See, e.g., *United States v. Pink*, 315 U.S. 203, 230-31 (1942); *Pigeon River Improvement, Slide & Boom Co. v. Charles W. Cox, Ltd.*, 291 U.S. 138, 160 (1934). Furthermore, federal statutes "ought never to be construed to violate the law of nations if any other possible construction remains. . . ." *The Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804), quoted in *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 21 (1963). Congress must clearly intend to depart from its treaty obligations before inconsistent federal legislation will govern. *Beny v. Compania Naviera Hildago, S.A.*, 353 U.S. 138, 147 (1957), quoted in 372 U.S. at 22.

⁴² *Maximov v. United States*, 299 F.2d 565, 568 (2d Cir. 1962), *aff'd*, 373 U.S. 49 (1963).

⁴³ See *Commercial Treaties - Treaties of Friendship, Commerce and Navigation with Israel, Ethiopia, Italy, Denmark, Greece, Finland, Germany and Japan: Hearings before the Subcom. of the Senate Comm. on Foreign Relations*, 83d Cong., 1st Sess. 2, 3, 6-9 (1953).

⁴⁴ 643 F.2d at 362.

qualified right to use their own executive personnel seems contrary to the plain language of Article VIII(1) and the expectations of the parties with regard to control of their respective investments. Furthermore, potential reverberations of such a limiting construction could easily endanger favorable treatment of U.S. companies abroad.

Although facilitation of international commerce remains important, the Supreme Court must weigh this priority against the "hard-won American commitment to eradicating discrimination"⁴⁵ and, in particular, the concern for providing equal opportunity in employment. If the Court holds that Article VIII(1) gives Japanese companies and their U.S. incorporated subsidiaries the absolute right to discriminate in favor of their own nationals, literally thousands of foreign companies⁴⁶ operating under commercial treaties with freedom of choice provisions could be exempt from operation of Title VII.⁴⁷ Such a holding would undermine the statutory equal opportunity protection enjoyed by U.S. workers.

Traditional canons of treaty construction provide the Court little guidance in resolving this unique and pressing issue. For example, when a treaty cannot be harmonized with an act of Congress, the general rule is that the later in time is to prevail.⁴⁸ Assuming irreconcilability between the Treaty and Title VII, the 1953 Treaty becomes subordinate to Title VII and the Civil Rights Act of 1964. Even if the court were to rely on this date of adoption rule to decide *Avigliano*, it will be faced with other FCN treaties which were adopted after the Civil Rights Act of 1964.⁴⁹ In addition to the anomalous situation of having differing constructions of identical provisions, a gross inequality would result from exempting from operation of Title VII some foreign countries but not others.

Another recognized canon of treaty interpretation is that Congress must clearly intend to depart from its treaty obligations before inconsistent federal legislation will govern.⁵⁰ Unfortunately, the legislative history of Title VII is silent as to its effect on FCN treaties and thus provides no guidance in resolving the conflict. Chances are remote, however, that the Court will predicate its decision on a finding that FCN treaties and Title VII are mutually repugnant.

⁴⁵ See Schwartz, *supra* note 9, at 976.

⁴⁶ As of August 1981, there were over 260 foreign-owned firms from twenty different countries operating in North Carolina alone. North Carolina Department of Commerce, Int'l Division: Foreign-owned Firms Operating in North Carolina (1981).

⁴⁷ The Second Circuit stated that such a broad Treaty construction, carried to its logical conclusion, would immunize foreign companies "not only from Title VII but also, from laws prohibiting employment of children, § 12 of the Fair Labor Standards Act, 29 U.S.C. § 212, laws granting rights to unions and employees, Labor Management Relations Act, 29 U.S.C. §§ 141-87, and the like." 638 F.2d at 559.

⁴⁸ See, e.g., *Akins v. United States*, 551 F.2d 1222 (C.C.P.A. 1977); *United States v. White*, 508 F.2d 453 (8th Cir. 1974).

⁴⁹ E.g., Treaty of Amity and Economic Relations with Thailand, May 29, 1966, United States-Thailand, 23 U.S.T. 1158, T.I.A.S. No. 7378 (adopted Apr. 26, 1967).

⁵⁰ See *supra* note 41.

The Court is left with three viable alternatives. First, the Court could find that Sumitomo is unable to invoke the protection of the Treaty because it was incorporated in the United States and therefore is a U.S. company. While this approach would subject Sumitomo to Title VII scrutiny, it would forestall resolution of the critical issue. Foreign subsidiaries would convert to branches and the question would again arise as to whether a foreign branch could unqualifiedly discriminate in favor of its nationals. Second, the Court could adopt the Fifth Circuit's view in *Spiess* and find that the Article VIII "of their choice" provision was intended to create an absolute rule permitting a foreign company to discriminate in favor of its own nationals.⁵¹ The more prudent alternative, however, would be to hold, as did the Second Circuit in *Avigliano*, that the "of their choice" provisions contained in FCN treaties are limited by the BFOQ exception to Title VII.

If the Court were to follow the Second Circuit and require foreign companies operating in the United States to justify their managerial and technical personnel employment decisions on the basis of bona fide occupational qualifications, it would preserve the integrity of FCN treaties without damaging employment opportunities for U.S. citizens. The general intent of post-World War II FCN treaties was to create a legal environment conducive to mutually beneficial trade and investment.⁵² An environment of mutuality suggests equal, not favored, treatment for foreign companies operating in the host country. This construction is buttressed by the preamble to the Japanese Treaty which states that rights established under the Treaty are founded on "principles of national and most-favored-nation treatment unconditionally accorded."⁵³ It is clear that foreign companies operating in the United States are not to be discriminated against; however, neither are they to be given a status superior to that of domestic corporations. The protection of Article VIII(1) should give foreign companies latitude to hire their own nationals, as long as those companies can show business necessity.⁵⁴ At the same time, equal opportunity in employment will be preserved by providing U.S. citizens an equal opportunity to compete for jobs in which nationality is not deemed essential to the protection of the foreign investment. This construction gives due consideration to foreign companies, who justifiably expect national treatment, without allowing such companies to ignore United States laws on employment discrimination.

A corporate defendant has never resorted to an FCN treaty as a defense to charges of employment discrimination. The Court's resolution of the issue will involve a balancing of the United States' interest in international commerce against its commitment to civil rights and equal-

⁵¹ See *supra* text accompanying notes 31-40.

⁵² See Walker, *supra* note 25, at 231.

⁵³ Preface, Japanese FCN Treaty *supra* note 3.

⁵⁴ See *supra* note 27.

ity of opportunity. The United States has an affirmative duty to honor its treaty obligations, but its commitments must be construed in light of the law as established by Congress. While a Supreme Court decision in favor of domestic civil rights laws may adversely affect U.S. relations with other countries, "every person [including other nations who may have ground for complaint] is bound to obey the law."⁵⁵ Thus, commercial treaties designed to encourage foreign investment must give way to the more fundamental notion of equal opportunity in employment.

—KIERAN J. SHANAHAN

[Ed. Note: After this issue went to press, the Supreme Court handed down its decision in *Avigliano, Sumitomi Shoji America, Inc. v. Avagliano* [sic], 102 S. Ct. 2374 (1982). The Court unanimously agreed with the District Court that Sumitomo was an American corporation and therefore incapable of invoking art. VIII(1) of the 1953 Treaty. The Court did not reach the Title VII issue. A month after the *Avigliano* decision, the court summarily remanded *Spiess v. C. Itoh & Co. (America)*, 102 S. Ct. 2951 (1982), for further consideration in light of *Avigliano*.]

⁵⁵ *Rainey v. United States*, 232 U.S. 310, 317 (1914).

Appendix A

U.S. DEPARTMENT OF COMMERCE
BUREAU OF ECONOMIC ANALYSIS

BE-13 REPORT ON A FOREIGN PERSON'S ESTABLISHMENT, ACQUISITION, OR PURCHASE OF THE OPERATING ASSETS OF A U.S. BUSINESS ENTERPRISE, INCLUDING REAL ESTATE

(Revised - To be Used for Covered Transactions Occurring on or after January 1, 1981)

INSTRUCTIONS

(Forms BE-13A and BE-13B)

INTRODUCTION

Purpose - BE-13 reports (Forms BE-13A and BE-13B) are required in order to obtain comprehensive initial data concerning new foreign direct investment in the United States that may affect the U.S. and foreign economies.

Authority - BE-13 reports are mandatory under Section 5(b)(2) of the International Investment Survey Act of 1976 (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108 - hereinafter, "the Act"). In Section 3 of Executive Order 11961, the President designated the Department of Commerce as the federal agency responsible for collecting the required data on direct investment, and the Secretary of Commerce has assigned this responsibility to the Bureau of Economic Analysis. The implementing regulations are contained in Title 15 CFR Part 806.

This report has been approved by the Office of Management and Budget under the Federal Reports Act (Pub. L. No. 831, 77th Congress).

Penalties - Whoever fails to report may be subject to a civil penalty not exceeding \$10,000 and to injunctive relief commanding such person to comply, or both. Whoever willfully fails to report shall be fined not more than \$10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violation, upon conviction, may be punished by a fine, imprisonment, or both. (See Section 6 of the Act, 22 U.S.C. 3105).

Confidentiality - The information filed in this report may be used only for analytical and statistical purposes and access to the information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act. The President may authorize the exchange of the information between agencies or officials designated to perform functions under the Act, but only for analytical and statistical purposes. No official or employee (including consultants and contractors and their employees) shall publish or make available any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified. Reports and copies of reports not submitted pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer (22 U.S.C. 3104.)

Response to this inquiry is required by law. By the same law your report to this Bureau is CONFIDENTIAL. It may be used only for analytical or statistical purposes and CANNOT be used for purposes of taxation, investigation, or regulation. The law also provides that copies retained in your files are immune from legal process.

I. DEFINITIONS

A. United States, when used in a geographic sense, means the several States the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

B. Foreign, when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

C. Person means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, department, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

D. Foreign person means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

E. Direct investment means the ownership or control, directly or indirectly, by one person of 10 percent or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise.

F. Foreign direct investment in the United States means the ownership or control, directly or indirectly, by one foreign person of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

G. Branch means the operations or activities conducted by a person in a different location in its own name rather than through an incorporated entity.

H. Affiliate means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 percent or more of its voting stock for an incorporated business or an equivalent interest for an unincorporated business, including a branch.

I. U.S. affiliate means an affiliate located in the United States in which a foreign person has a direct investment.

J. Foreign parent means the first foreign person in the ownership chain of the U.S. affiliate.

K. Affiliated foreign group means (i) the foreign parent, (ii) any foreign person, proceeding up the foreign parent's ownership chain, which owns more than 50 percent of the person below it up to and including that person which is not owned more than 50 percent by another foreign person, and (iii) any foreign person, proceeding down the ownership chain(s) of each of these members, which is owned more than 50 percent by the person above it.

L. Foreign affiliate of foreign parent means, with reference to a given U.S. affiliate, any member of the affiliated foreign group owning the affiliate that is not a foreign parent of the affiliate.

M. U.S. corporation means a business enterprise incorporated in the United States.

N. Business enterprise means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate.

I. DEFINITIONS (Continued)

O. Intermediary means an agent, nominee, manager, custodian, trust, or any person acting in a similar capacity.

P. Associated group means two or more persons who, by the appearance of their actions, by agreement, or by an understanding, exercise their voting privileges in a concerted manner to influence the management of a business enterprise. Each of the following are deemed to be an associated group:

- (1) Members of the same family.
- (2) A business enterprise and one or more of its officers and directors.
- (3) Members of a syndicate or joint venture, or
- (4) A corporation and its domestic subsidiaries.

Q. Ultimate beneficial owner (UBO) is that person, proceeding up the ownership chain beginning with and including the foreign parent, that is not more than 50 percent owned or controlled by another person. (A person who creates a trust, proxy, power of attorney, arrangement, or device with the purpose or effect of divesting such owner of the ownership of an equity interest as part of a plan or scheme to avoid reporting information, is deemed to be the owner of the equity interest.)

II. GENERAL INSTRUCTIONS

A. Who must report

1. Form BE-13A "Form for a U.S. Business Enterprise, Business Segment, or Operating Unit that has been Established or Acquired by a Foreign Person or Existing U.S. Affiliate of a Foreign Person," must be completed either:

- a) by a U.S. business enterprise when a foreign person establishes or acquires directly, or indirectly through an existing U.S. affiliate, a 10 percent or more voting interest in that enterprise, including an enterprise that results from the direct or indirect acquisition by a foreign person of a business segment or operating unit of an existing U.S. business enterprise that is then organized as a separate legal entity; or
- b) by the existing U.S. affiliate of a foreign person when it acquires a U.S. business enterprise, or a business segment or operating unit of a U.S. business enterprise, that the existing U.S. affiliate merges into its own operations rather than continuing or organizing as a separate legal entity.

2. Form BE-13B "Form for Foreign Person, or Existing U.S. Affiliate of a Foreign Person, that Establishes or Acquires a U.S. Business Enterprise, or a Business Segment or Operating Unit of a U.S. Business Enterprise" must be completed either:

- a) by a foreign person when it establishes or acquires a direct voting interest in a U.S. business enterprise that becomes its U.S. affiliate, or by the new U.S. affiliate for the foreign person to the extent it has or can secure the information; or
- b) by an existing U.S. affiliate of a foreign person when it establishes or acquires a direct voting interest in a U.S. business enterprise of equal or greater magnitude than the established or acquired enterprise becomes a U.S. affiliate of the foreign person, i.e., the foreign person thereby acquires an indirect (or direct and indirect) voting interest of 10 percent or more in the established or acquired U.S. business enterprise - see Section II, F below for method for calculating indirect ownership; or
- c) by an existing U.S. affiliate of a foreign person when it acquires a U.S. business enterprise, or a business segment or operating unit of a U.S. business enterprise, and merges it into its own operations.

A separate Form BE-13B must be completed by or for each foreign parent, or by each existing U.S. affiliate, that has secured a direct voting interest in a new U.S. affiliate.

B. Exclusions and Exemptions - See front of Forms BE-13A and BE-13B.

NOTE: All exempt U.S. affiliates should be aware of the quarterly and annual surveys of foreign direct investment in the United States (Forms BE-6, BE-605, and BE-608B) conducted by this Bureau and the exemption criteria pertaining to each (see 15 CFR Part 806.15). If a U.S. affiliate is exempt on Form BE-13, it is also exempt from filing in any of the quarterly or annual surveys at this time. However, if through internal growth, acquisitions, new infusions of capital, the purchase of land, etc., a previously exempt affiliate exceeds the exemption criteria of the quarterly and annual surveys in the future, it is the affiliate's legal responsibility to secure and file the appropriate forms. In the year that the biannual BE-12 benchmark survey is conducted, this Bureau will mail forms to each U.S. affiliate on our mailing list, including those exempted from filing in other surveys. If a U.S. affiliate is exempt from filing in the BE-12 survey, it may file a claim for exemption at that time.

C. Determining whether an individual is a foreign person or a U.S. person based on residence - An individual will be considered a resident of, and subject to the jurisdiction of, the country in which physically located, subject to the following qualifications:

1. Individuals who reside, or expect to reside, outside their country of citizenship for less than one year are considered to be residents of their country of citizenship.
2. Individuals who reside, or expect to reside, outside their country of citizenship for one year or more are considered to be residents of the country in which they are residing, except as provided in 3. below.
3. Notwithstanding 2., if an owner or employee of a business enterprise resides outside the country of location of the enterprise for one year or more for the purpose of furthering the business of the enterprise, and the country of the business enterprise is the country of citizenship of the owner, then such owner or employee shall nevertheless be considered a resident of the country of citizenship provided there is the intent to return within a reasonable period of time.
4. Individuals and members of their immediate families who are residing outside their country of citizenship as a result of employment by the government of that country - diplomats, consular officials, members of the armed forces, etc. - are considered to be residents of their country of citizenship.

(Form BE-13A and BE-13B)

II. GENERAL INSTRUCTIONS (Continued)

D. Reporting by intermediaries — If a particular foreign direct investment in the United States is held, exercised, controlled, or managed by a U.S. intermediary for the foreign beneficial owner, such intermediary shall be responsible for reporting the required information for, and in the name of, the new U.S. affiliate, and shall report on behalf of the new U.S. affiliate or shall instruct the new U.S. affiliate to submit the required information. Upon so instructing the new U.S. affiliate, the intermediary shall be released from further liability to report provided it has informed the Bureau of the date such instructions were given and the name and address of the U.S. affiliate; and has supplied the new U.S. affiliate with any information in the possession of, or which can be secured by, the intermediary that is necessary to permit the new U.S. affiliate to complete the required reports. If the new U.S. affiliate is in the form of real property that includes no entity from which a report could be required, the intermediary of the foreign beneficial owner is required to report. When acting in the capacity of an intermediary, the accounts or transactions of the U.S. intermediary with a foreign beneficial owner shall be considered as accounts or transactions of the new U.S. affiliate with the foreign beneficial owner. To the extent such transactions or accounts are unavailable to the new U.S. affiliate, they may be required to be reported by the intermediary.

E. Unusual reporting situations — It may be unclear from the forms and related instructions how certain unusual situations should be reported. This will be true particularly where there is a change of ownership of direct plus indirect ownership interests, or where members of an affiliated foreign group have, or acquire, more than one fractional interest of less than 10 percent, but which in total add to more than a 10 percent interest when all lines of ownership are considered. Rather than further complicating the instructions by trying to allow for all possible reporting situations, we request that those who must report for an unusual situation call us to discuss how best to report it. One such situation is discussed below.

1. **Prior ownership of less than a 10 percent voting interest.** Where a foreign person directly or indirectly held a less than 10 percent voting interest in a U.S. business enterprise and then acquires additional voting interests such that its ownership goes to 10 percent or more, the entire investment shall be reported.

F. Calculation of percentage of indirect voting ownership — A foreign person's percentage of indirect voting ownership in a given U.S. business enterprise is the product of the direct voting ownership percentage of the foreign person in the first U.S. business enterprise in the ownership chain times that first enterprise's direct voting ownership percentage in the second U.S. business enterprise times each succeeding direct voting ownership percentage of each other intervening U.S. business enterprise in the ownership chain between the foreign person and the given U.S. business enterprise.

G. Consolidated reporting by a new U.S. affiliate — A new U.S. affiliate shall file Form BE-13A on a fully consolidated basis, including in the consolidation all other U.S. affiliates in which it directly or indirectly owns more than 50 percent of the outstanding voting stock. (Foreign subsidiaries of the new U.S. affiliate are not to be included in the consolidation, except as provided below under the equity method of accounting.) However, separate reports may be filed where a given U.S. affiliate is not normally consolidated due to unrelated operations or lack of control, provided written permission has been requested from and granted by BEA. Hereinafter, the consolidated entity is considered to be the new U.S. affiliate.

A U.S. affiliate that is unconsolidated must file its own Form BE-13A.

H. Equity method of accounting — Investments by the new U.S. affiliate in business enterprises not included in the consolidation and which are 20 percent or more owned shall be accounted for following the equity method of accounting. However, in these cases, intercompany items are not to be eliminated.

I. Business segment — Business segment as used in these reports is not limited to those "segments" meeting the criteria set forth in Financial Accounting Standards Board Statement Number 14.

III. ACCOUNTING METHODS AND REPORTING PROCEDURES

A. Accounting methods and records — Generally accepted U.S. accounting principles should be followed. Corporations should generally use the same methods and records that are used to generate reports to stockholders except where the instructions indicate a variance.

B. Annual stockholder's report — U.S. affiliates issuing annual reports to stockholders are requested to furnish a copy of their annual reports to this Bureau.

C. Estimates — If actual figures are not available, estimates should be supplied and labeled as such. When a data item cannot be fully subdivided as required, a total and an estimated breakdown of the total should be supplied.

D. Space on form insufficient — When space on a form is insufficient to permit a full answer to any item, the required information should be submitted on supplementary sheets, appropriately labeled and referenced to the item number and the form or supplement.

IV. FILING REPORTS

(To facilitate processing, it is preferred that the BE-13A and the BE-13B forms be filed together, or simultaneously.)

A. Due date — Forms BE-13A and BE-13B are due no later than 45 days after the investment transaction occurs. NOTE: Form BE-607, Industry Classification Questionnaire, must also be completed by a new U.S. affiliate and returned with the completed Form BE-13A.

B. Extension — Requests for an extension of the reporting deadline will not normally be granted. However, in a hardship case, a written request for an extension will be considered provided it is received at least 15 days prior to the due date of the report and enumerates substantive reasons necessitating the extension. BEA will provide a written response to such requests.

C. Assistance — If there are any questions concerning the report, telephone (202) 523-0547 for assistance.

D. Number of copies — A single original copy of each form is to be filed with the Bureau of Economic Analysis. In addition, each person filing a form must retain a copy to facilitate resolution of any problems that may arise covering the date reported. (Both copies are protected by law; see statement on confidentiality in the Introduction.) File copies should be retained for 3 years after the date on which the form is due.

E. Where to send report — Return reports to U.S. Department of Commerce, Bureau of Economic Analysis, BE-50 (NI) Washington, D.C. 20230.

V. SPECIAL INSTRUCTIONS FOR INSURANCE COMPANIES

When there is a difference, the financial and operating data are to be prepared on the same basis as an annual report to the stockholders, rather than on the basis of an annual statement to an insurance department. Valuation should be according to normal commercial accounting procedures, not at the rates promulgated by the National Association of Insurance Commissioners. Include assets not acceptable for the annual statement to an insurance department. Specific instructions for income statement items are:

Costs and expenses relating to operations (to be used in determining net income) include costs relating to sales or gross operating revenues, such as policy losses incurred, death benefits, matured endowments, other policy benefits, increases in liabilities for future policy benefits, other underwriting expenses, and investment expenses.

Sales or gross operating revenues, excluding sales taxes — Include items such as earned premiums, annuity considerations, gross investment income and items of a similar nature. Exclude income from foreign affiliates.

VI. SPECIAL INSTRUCTIONS FOR REAL ESTATE

If a business enterprise, otherwise required to report, is in the form of real property not identifiable by name, reports are required to be filed by and in the name of the beneficial owner, or in the name of such beneficial owner by the intermediary of such beneficial owner.

BE-13A:

Part I, Items 1 through 4:

The direct purchase of real estate — unimproved land, farms, office buildings, shopping centers, etc. — shall be considered to be an item 1 transaction where the purchase is effected by buying or selling an interest in an existing corporation, in which case it will be an item 2 transaction.

Part II:

Item 5 — for real estate investments being reported, BEA is not seeking a legal description of the property, nor necessarily the address of the property itself. Since there may be no operating business enterprise as such for the investment, what is wanted is a consistently identifiable investment (i.e., U.S. affiliate) together with an address to which report forms can be mailed so that the investment (affiliate) can be reported on a consistent basis from survey to survey, or period to period. Thus, in item 5, the "name and address" of the U.S. affiliate might be: XYZ Corp. N.Y., Real Estate Investments; c/o B&K Inc., Accountants; 120 Major Street; Miami, Florida XXXXX

If the investment property has a name, such as Sunrise Apartments, Acme Building, etc., the name and address in item 5 might be: Sunrise Apartments; c/o ABC Real Estate; 120 Major Street; Miami, Florida XXXXX

Item 10 — This would normally be the closing (settlement) date of the purchase.

Items 12 through 16 — If the new U.S. affiliate is not incorporated, give the percent ownership in item 12, column 3 for direct purchases by the foreign parent; and in item 13, column 3 for direct purchases by an existing U.S. affiliate.

VII. SPECIAL INSTRUCTIONS CONCERNING THE ESTABLISHMENT OF A HOLDING COMPANY, WITH MINIMAL CAPITALIZATION, PREPARATORY TO ACQUIRING OR ESTABLISHING A U.S. BUSINESS ENTERPRISE

The following procedures attempt to minimize reporting of multiple step transactions that require the filing of several BE-13 reports or exemption claims. The transaction date for reporting an initial investment in a U.S. holding company, or similar entity, by a foreign person or by an existing U.S. affiliate, if a foreign person may be deferred from the date of the initial investment if:

- (1) The initial capitalization (both debt and equity) of the U.S. holding company, or similar entity, is \$5,000,000 or less, and
- (2) The purpose of setting up the U.S. holding company, or similar entity, is to facilitate the subsequent acquisition of a U.S. business enterprise or to establish an operating U.S. affiliate, within 180 days.

A report must be filed within 45 days of the completion of the holding company's acquisition of the U.S. business enterprise or the establishment of an operating U.S. affiliate. When the BE-13A is filed, if the holding company has not been dissolved, the report must fully consolidate the holding company, and the newly acquired or established U.S. affiliate. The BE-13B should be completed from the viewpoint of an investment by a foreign person, or a previously existing U.S. affiliate, in the holding company, or the establishment of an operating U.S. affiliate, accounting for all funds for both investments. If applicable, entries should also be made on Supplements A and/or B. A brief letter of explanation describing the situation and transaction dates should accompany the filing.

In order to qualify for this deferral both the acquisition or establishment of the holding company and the secondary investment transaction must occur within 180 days of each other. If both do not take place within that time, a BE-13 report (or exemption claim) must be filed by the U.S. holding company no later than 45 days beyond the 180-day deferral period.

VIII. SPECIFIC INSTRUCTIONS FOR REPORTING EMPLOYMENT AND EMPLOYEE COMPENSATION

Employment and employee compensation in items 41 and 42 of Form BE-13A should relate to activities during the reporting period regardless of whether their costs were, or will be, charged as an expense on the income statement, charged to inventories, or capitalized.

A. Employment — Includes part-time and full-time workers, but excludes home workers and independent sales personnel who are not employees. Where the investment being reported represents the acquisition of a U.S. business enterprise, business segment, or operating unit (i.e., item 2, 3, or 4 of Form BE-13A is marked), give the average for the reporting period of the number of persons on the payroll at the end of each year, period, month, or quarter. (Employment at the end of the reporting period may be used as an estimate of average employment only if employment did not vary significantly during the period.) Where the investment being reported represents the establishment of a new U.S. business enterprise (i.e., item 1 of Form BE-13A is marked), give the number of persons expected to be on the payroll at the end of the reporting period.

B. Employee compensation — Includes wages and salaries, whether paid in cash or kind (valued at the cost to the employer), and employer expenditures for all employee benefit plans. Exclude employer expenditures for plant facilities, employee training, and reimbursements for business expenses. For incorporated business enterprises, include salaries of officers; for unincorporated business enterprises, exclude payments to proprietors or partners. Where the investment being reported represents the acquisition of a U.S. business enterprise, business segment, or operating unit (i.e., item 2, 3, or 4 of Form BE-13A is marked), give total employee compensation paid during the reporting period. Where the investment being reported represents the establishment of a new U.S. business enterprise (i.e., item 1 of Form BE-13A is marked), give an estimate of annual expenditures for employee compensation based on the number and type of employees expected to be on the payroll at the end of the reporting period.

Appendix B

OMB No. 0608-0023; Form Expires March 1984

FORM BE-606B (REV. 2-61)	U.S. DEPARTMENT OF COMMERCE BUREAU OF ECONOMIC ANALYSIS	I. IDENTIFICATION 1. Report for quarter ending MONTH DAY YEAR If revised, mark here 3 <div style="border: 1px solid black; padding: 2px; margin-top: 5px;"> <div style="text-align: right; font-weight: bold; font-size: small;">BEA USE ONLY</div> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%; height: 20px;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> </table> </div> 2. Name and address of U.S. affiliate										
TRANSACTIONS OF U.S. BANKING BRANCH OR AGENT WITH FOREIGN PARENT MANDATORY CONFIDENTIAL QUARTERLY REPORT		3. Name of foreign parent 4. Country of location of foreign parent BEA USE ONLY										
This report is required by law - Section 5(b)(2), P.L. 94-472, 90 Stat. 2059, 22 U.S.C. 3104. Whoever fails to report may be subject to a civil penalty not exceeding \$10,000 and to injunctive relief commanding such person to comply, or both. Whoever willfully fails to report shall be fined not more than \$10,000 and, if an individual, may be imprisoned for not more than one year, or both.		5. If U.S. affiliate's industry classification has changed, mark here and complete Form BE-607, Industry Classification Questionnaire. 004										
RETURN TO	U.S. Department of Commerce Bureau of Economic Analysis, BE-50 (IN) Washington, D.C. 20230	05 1 2										
IMPORTANT - Report data according to books of U.S. affiliate. Read instructions on reverse side before completing this form. REPORT ALL AMOUNTS IN THOUSANDS OF U.S. DOLLARS.												
II. TRANSACTIONS WITH FOREIGN PARENT Note: Only positions and transactions relating to the foreign parent's permanent invested capital in the U.S. affiliate are to be reported on this form in items 6, 7, 9, 10, and 12, and these amounts must not be reported on Treasury International Capital Reporting Forms BQ-1, BQ-2, BL-1, BL-2, and BC.												
6. Foreign parent's permanent invested capital in the U.S. banking affiliate at beginning of quarter. This would normally consist of capital allocated to the U.S. affiliate, special reserves out of net income, and net income not yet distributed.	06	Amount Bil. Mil. Thou. Dols.										
7. Transfer of permanent invested capital to U.S. affiliate by the foreign parent during quarter	07											
8. Foreign parent's equity in U.S. affiliate's quarterly net income (loss) after provision for U.S. income taxes. Amounts shown in items 16 through 19 should already be included as reductions to income.	08											
9. Other additions to permanent invested capital Less: Return of permanent invested capital to foreign parent by U.S. affiliate and other deductions from permanent invested capital	09											
10. Income remitted to the foreign parent	10											
11. Foreign parent's permanent invested capital in the U.S. banking affiliate at end of quarter. This would normally consist of capital allocated to the U.S. affiliate, special reserves out of net income, and net income not distributed. (Equals items 6 + 7 + 8 + 9 - 10 - 11)	11											
Foreign parent's equity in U.S. affiliate's net unrealized and realized capital gains (losses)	12											
13. Included in income, item 8. Show losses in parentheses ().	13											
14. Excluded from income, item 8, but included in investment in item 9 or 10. Show losses in parentheses ().	14											
15. Gain (loss) on sale or liquidation of U.S. affiliate. Specify whether gain or (loss). Foreign parent's charges to U.S. affiliate, less U.S. affiliate's charges to the foreign parent, during quarter. Report net negative charges in parentheses ().	15											
16. Interest on permanent invested capital reported in items 6 and/or 12	16											
17. Royalties, license fees, and other fees for use or sale of intangible property	17											
18. Charges for use of tangible property	18											
19. Fees for services rendered including fees for management, professional, or technical services, and allocated expenses	19											
BEA USE ONLY → 20												
PERSON TO CONSULT CONCERNING QUESTIONS ABOUT THIS REPORT	Name and Address	TELEPHONE NUMBER Area code Number Extension										
CERTIFICATION The U.S. affiliate, and the official executing this certification on its behalf, hereby certify that the information contained in this report is correct to the best of their knowledge and belief.												
Authorized official's signature	Title	Date										

INSTRUCTIONS

Purpose - Reports on this form are required in order to provide reliable and up-to-date information on foreign direct investment in the United States.

Authority - Reports on Form BE-606B are mandatory under Section 5(b)(2) of the International Investment Survey Act of 1976 (P.L. 94-472, 90 Stat. 2059, 22 U.S.C. 3104 - hereinafter "the Act"). In Section 3 of Executive Order 11961, the President designated the Department of Commerce as the federal executive agency responsible for collecting the required data on direct investment, and the Secretary of Commerce has assigned this responsibility to the Bureau of Economic Analysis. The implementing regulations are contained in Title 15, CFR, Part 806.

This report has been approved by the Office of Management and Budget under the Federal Reports Act (Public Law No. 813, 77th Congress).

Penalties - Whoever fails to report may be subject to a civil penalty not exceeding \$10,000 and to injunctive relief commanding such person to comply, or both. Whoever willfully fails to report shall be fined not more than \$10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violation, upon conviction, may be punished by a fine, imprisonment, or both. (See Section 6 of the Act, 22 U.S.C. 3105.)

Confidentiality - The information filed in this report may be used only for analytical and statistical purposes and access to the information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act. The President may authorize the exchange of the information between agencies or officials designated to perform functions under the Act, but only for analytical and statistical purposes. No official or employee (including consultants and contractors and their employees) shall publish or make available any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified. Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer (22 U.S.C. 3104).

DEFINITIONS

United States, when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

Foreign, when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

Person means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

Foreign person means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

Direct investment means the ownership or control, directly or indirectly, by one person of 10 per centum or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise.

Foreign direct investment in the United States means the ownership or control, directly or indirectly, by one foreign person of 10 per centum or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

Branch means the operations or activities conducted by a person in a different location in its own name rather than through an incorporated entity.

Affiliate means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 per centum or more of its voting stock for an incorporated business or an equivalent interest for an unincorporated business, including a branch.

U.S. affiliate means an affiliate located in the United States in which a foreign person has a direct investment.

Foreign parent means the first foreign person in the ownership chain of the U.S. affiliate.

Affiliated foreign group means (i) the foreign parent, (ii) any foreign person, proceeding up the foreign parent's ownership chain, which owns more than 50 per centum of the person below it up to and including that person which is not owned more than 50 per centum by another foreign person, and (iii) any foreign person, proceeding down the ownership chain(s) of each of these members, which is owned more than 50 per centum by the person above it.

Foreign affiliate of foreign parent means, with reference to a given U.S. affiliate, any member of the affiliated foreign group owning the affiliate that is not a foreign parent of the affiliate.

U.S. corporation means a business enterprise incorporated in the United States.

FORM BE-606B (REV. 2-81)

Business enterprise means any organization, association, branch, or venture which exists for profit-making purposes or to otherwise secure economic advantage, and any ownership of any real estate.

Banking includes business enterprises engaged in deposit banking. Edge Act corporations engaged in international or foreign banking, U.S. branches and agencies of foreign banks whether or not they accept domestic deposits, and bank holding companies, i.e., holding companies for which over 50 percent of their total income is from banks which they hold.

Who must report - Except as exempted below, Form BE-606B is required from every unincorporated U.S. banking branch or agency in which a foreign person had a direct and/or indirect ownership interest of 10 percent or more at any time during the reporting period. The report is to cover direct transactions and positions between the unincorporated U.S. banking branch or agency (U.S. affiliate) and the foreign parent. Related forms for reporting foreign direct investment in the U.S. are:

BE-605 Transactions of U.S. Affiliate, Except an Unincorporated Bank, with Foreign Parent

BE-607 Industry Classification Questionnaire

Reports are required even though the foreign person's equity interest in the U.S. business enterprise may have been established, acquired, liquidated, sold, or inactivated during reporting period.

NOTE: Each unincorporated U.S. banking affiliate must file a Form BE-606B. Two or more unincorporated U.S. banking affiliates owned by the same foreign person may file a single Form BE-606B combining their reportable transactions provided written permission has been requested from and granted by BEA.

Multiple foreign parents - Where two or more foreign persons hold reportable equity interests in an unincorporated U.S. banking affiliate, a separate report should be filed to report the transactions or accounts with each foreign parent.

Exemption - A U.S. affiliate is not required to report if each of the following three items for the U.S. affiliate (not the foreign parent's share) is between -\$5,000,000 and \$5,000,000.

- (1) Total assets,
- (2) Annual sales or gross operating revenues, excluding sales taxes (not gross margin), and
- (3) Annual net income after provision for U.S. income taxes.

Quarterly reports for a year may be required retroactively when it is determined that the exemption level has been exceeded. If a U.S. affiliate's total assets, sales or net income exceed the exemption level in a given year, it is deemed that the exemption level will also be exceeded in the following year.

NOTE: If any one of the three items above exceeds the exemption level, either positive or negative, the U.S. affiliate must report. Since these items are not reported on Form BE-606B, a U.S. affiliate claiming exemption from filing a given report must furnish a certification as to the levels of these three items.

Filing of report - Form BE-606B is a quarterly report. A single copy of each report should be sent to: U.S. Department of Commerce, Bureau of Economic Analysis, BE-50 (IN), Washington, D.C. 20230, within 30 days after the close of each calendar (or fiscal) quarter, except for the report following the end of the calendar (or fiscal) year, when reports may be filed within 45 days. Requests for extension of the filing date, additional forms, or clarification of the reporting requirements or instructions should be directed to the above address.

Data to be reported on this form and relationship to Treasury International Capital Reporting Forms BQ-1, BQ-2, BL-1, BL-2, and BC - Only positions and transactions relating to the foreign parent's permanent invested capital in the U.S. affiliate are to be reported on this form in items 6, 7, 9, 10, and 12, and these amounts must not be reported on Treasury International Capital Reporting Forms.

SPECIFIC INSTRUCTIONS

Currency amounts should be reported in U.S. dollars and rounded to the nearest thousand. If an amount is between \$500 enter "0". Use parentheses to indicate negative numbers.

Estimates may be provided where necessary in order to file a timely report.

Item 5. Industry classification refers to the BEA 3-digit industry codes given in the Industry Classification Questionnaire, Form BE-607.

Item 8. The amount entered should represent the foreign parent's equity in the U.S. affiliate's net income (loss) for the quarter after provision for U.S. income taxes. (Do not report net income on a cumulative basis.) The income statement underlying this and related items should be on the "all inclusive" basis.

Items 13 and 14. Net unrealized and realized capital gains (losses) include net capital gains (losses) resulting from changes in U.S. affiliate's foreign currency denominated assets and liabilities due to changes in foreign exchange rates during the period; net unrealized capital gains (losses), which are recognized, resulting from revaluations of assets, and net realized capital gains (losses) resulting from disposition of assets such as the sale of investment securities or property, plant, or equipment items. All gains (losses) should be included in net income, item 8, and therefore, should be shown in item 13; if, for some reason, they were not included in net income but were included in item 9 or item 10, enter the amount in item 14.

USCOM-DC 81-58933-P 81

Appendix C

U.S. DEPARTMENT OF COMMERCE
Bureau of Economic Analysis

BENCHMARK SURVEY OF FOREIGN DIRECT INVESTMENT IN THE UNITED STATES, 1980

INSTRUCTION BOOKLET
(Form BE-12)

INTRODUCTION

The Benchmark Survey of Foreign Direct Investment in the United States, 1980, is being conducted by the Department of Commerce to obtain data on foreign direct investment in the United States needed to measure the economic significance of such investment and facilitate the analysis of its effect on the U.S. economy. The last such survey was conducted for 1974.

The filing of reports for this Survey is mandatory under Section 5 of the International Investment Survey Act of 1976, Public Law No. 472, 94th Congress, 90 Stat. 2059, 22 U.S.C. 3101-3108 (hereinafter, "the Act"). In Section 3 of Executive Order 11961 of January 19, 1977, the President designated the Department of Commerce (in the absence of any contrary delegation or direction by the Director of the Office of Management and Budget (OMB)) as the Federal executive agency responsible for collecting the required data on direct investment. Within the Department of Commerce, this responsibility has been delegated to the Bureau of Economic Analysis. This Survey has been approved by OMB under the Federal Reports Act (44 U.S.C. 3501, *et seq.*).

As provided by Section 5(c) of the Act, the information reported may be used for analytical and statistical purposes only and access to the information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act. No official or employee (including consultants and contractors and their employees) shall publish or make available to any person any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified. Reports and copies of reports prepared pursuant to the Act are confidential; no person can compel their submission or disclosure without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer.

A report must be filed by, or on behalf of, each U.S. business enterprise in which a foreign person owned or controlled a direct or indirect interest of 10 percent or more at any time during the U.S. business enterprise's 1980 fiscal year. Ownership of U.S. real estate, other than for personal use, is deemed to be a business enterprise. Reporting requirements and instructions relating to specific parts of the report form are given herein. Regulations may be found in 15 CFR, Part 806.

If a person receiving the report form and instructions is not required to report according to the Act and the reporting requirements contained herein, a "Claim for Not Filing a Form BE-12," printed on the last page of Form BE-12, must be completed and returned to the Bureau of Economic Analysis within 30 days.

Failure to respond is punishable by civil or criminal penalties, or both.

Your cooperation will be appreciated.

Sincerely,



Director,
Bureau of Economic Analysis

CONTENTS

	Page
I. Purpose and legal authority	1
A. Purpose	1
B. Authority	1
C. Penalties	1
D. Confidentiality	1
II. Definitions	1
III. General instructions	3
A. Who must report	3
B. Fiscal year reporting period	3
C. Calculation of indirect ownership interest	4
D. Accounting methods and records	4
E. Consolidated reporting by U.S. affiliate	4
F. Aggregation of real estate investments	4
G. Exemption	4
H. Method of accounting for equity investments in business enterprises that are not fully consolidated	5
I. Changes in the reporting entity	5
J. Reporting by unincorporated U.S. affiliate	5
K. Industry and export and import trade classifications	5
L. Number of BE-12 Part IIIs, Investment and Transactions Between U.S. Affiliate and Foreign Parent, to be filed	6
M. Bearer shares	6
N. Separate filing of information by foreign parent or ultimate beneficial owner ..	6
O. Required information not available	6
P. Estimates	6
Q. Specify	6
R. Space on form insufficient	6
IV. Special instructions	6
A. Insurance companies	6
B. Banks	7
C. Airlines and ship operators	7
D. Railroad transportation companies	7
E. Real estate	7
F. Estates, trusts, and intermediaries	9
G. Partnerships	10
H. Determining place of residence and country of jurisdiction of individuals	10
V. Response required when contacted by BEA	11
VI. Filing the BE-12	11
A. Due date	11
B. Extension	11
C. Assistance	11
D. Annual stockholders' report	11
E. Number of copies	12
F. Where to send report	12
VII. Instructions for specific sections of the report form	12
A. Employment and employee compensation	12
B. U.S. merchandise exports and imports	13
C. Distribution of selected data by State	14

REPORTING REQUIREMENTS

I. Purpose and Legal Authority

- A. Purpose**—Reports on this form are required in order to provide complete and accurate data on the amount, types, and financial and operating characteristics of foreign direct investments in the United States.
- B. Authority**—Reports on Form BE-12 are mandatory under Section 5(b)(2) of the International Investment Survey Act of 1976 (P.L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108—hereinafter the “Act”). In Section 3 of Executive Order 11961, the President designated the U.S. Department of Commerce as the Federal agency responsible for collecting the required data on direct investment, and the Secretary of Commerce has assigned this responsibility to the Bureau of Economic Analysis (BEA). The implementing regulations are contained in Title 15, CFR, Part 806.

This report has been approved by the Office of Management and Budget under the Federal Reports Act (44 U.S.C. 3501, et seq.).

- C. Penalties**—Whoever fails to report may be subject to a civil penalty not exceeding \$10,000 and to injunctive relief commanding such person to comply, or both. Whoever willfully fails to report shall be fined not more than \$10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violation, upon conviction, may be punished by like fine, imprisonment, or both. (See Section 6 of the Act, 22 U.S.C. 3105).
- D. Confidentiality**—The information filed in this report may be used only for analytical and statistical purposes and access to the information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act. The President may authorize the exchange of the information between agencies or officials designated to perform functions under the Act, but only for analytical and statistical purposes. No official or employee (including consultants and contractors and their employees) shall publish or make available any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified. Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer (22 U.S.C. 3104).

II. Definitions

- A. United States**, when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.
- B. Foreign**, when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

- C. **Person**, means any individual, branch, partnership, association, associated group, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government sponsored agency).
- D. **Foreign person** means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.
- E. **Direct investment** means the ownership or control, directly or indirectly, by one person of 10 per centum or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise.
- F. **Foreign direct investment in the United States** means the ownership or control, directly or indirectly, by one foreign person of 10 per centum or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.
- G. **Branch** means the operations or activities conducted by a person in a different location in its own name rather than through an incorporated entity.
- H. **Affiliate** means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 per centum or more of its voting securities for an incorporated business enterprise or an equivalent interest for an unincorporated business enterprise, including a branch.
- I. **U.S. affiliate** means an affiliate located in the United States in which a foreign person has a direct investment.
- J. **Foreign parent** means the foreign person, or the first person outside the United States in a foreign chain of ownership, which has direct investment in a U.S. business enterprise, including a branch.
- K. **Affiliated foreign group** means (i) the foreign parent, (ii) any foreign person, proceeding up the foreign parent's ownership chain, which owns more than 50 per centum of the person below it up to and including that person which is not owned more than 50 per centum by another foreign person, and (iii) any foreign person, proceeding down the ownership chain(s) of each of these members, which is owned more than 50 per centum by the person above it.
- L. **Associated group** means two or more persons who, by the appearance of their actions, by agreement, or by an understanding, exercise or appear to exercise, their voting privileges in a concerted manner to influence the management of a business enterprise. The following are deemed to be associated groups:
 - 1. Members of the same family.
 - 2. A business enterprise and one or more of its officers or directors.
 - 3. Members of a syndicate or joint venture.
 - 4. A corporation and its domestic subsidiaries.
- M. **Foreign affiliate of a foreign parent** means, with reference to a given U.S. affiliate, any member of the affiliated foreign group owning the U.S. affiliate that is not a foreign parent of the U.S. affiliate.

- N. U.S. corporation** means a business enterprise incorporated in the United States.
- O. Business enterprise** means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate.
- P. Intermediary** means any agent, nominee, manager, custodian, trust, or any person acting in a similar capacity.
- Q. Ultimate beneficial owner (UBO)** is that person, proceeding up the ownership chain beginning with and including the foreign parent, that is not more than 50 percent owned or controlled by another person. (A person who creates a trust, proxy, power of attorney, arrangement, or device with the purpose or effect of divesting such owner of the ownership of an equity interest as part of a plan or scheme to avoid reporting information, is deemed to be the owner of the equity interest.)
- R. Lease** is an arrangement conveying the right to use property, plant, or equipment (i.e., land and/or depreciable assets), usually for a stated period of time.
1. Capital lease—A long-term lease under which a sale of the asset is recognized at the inception of the lease. These may be shown as lease contracts or accounts receivable on the lessor's books. The assets would not be considered as owned by the lessor.
 2. Operational lease—Generally, a lease with a term which is less than the useful life of the asset and the transfer of ownership is not contemplated.
- S. U.S. affiliate's 1980 fiscal year** is the affiliate's financial reporting year that has an ending date in calendar year 1980.

III. General Instructions

- A. Who must report**—A BE-12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at any time during the business enterprise's 1980 fiscal year.

A report is required even though the foreign person's equity interest in the U.S. business enterprise may have been established, acquired, liquidated, or sold during the reporting period.

Beneficial, not record, ownership is the basis of the reporting criteria.

Voting securities, voting stock, ownership interest, equity interest, and voting interest all have the same general meaning and are used more or less interchangeably throughout the instructions and the report form, although one may be more appropriate than the others when referring to a specific business enterprise, or group of enterprises.

- B. Fiscal year reporting period**—The report is to cover the U.S. affiliate's 1980 fiscal year. The affiliate's 1980 fiscal year is defined to be the affiliate's financial reporting year that has an ending date in calendar year 1980. For a business enterprise that does not have a financial reporting year, such as investments in unimproved real estate, or does not have a financial reporting year ending in calendar year 1980, its 1980 fiscal year is deemed to be the same as calendar year 1980. (U.S. affiliates that changed the ending date of their financial reporting year in 1980 should contact BEA to determine what reporting period should be used.)

- C. Calculation of indirect ownership interest**—All direct and indirect lines of ownership interest held by a foreign person in a given U.S. business enterprise must be summed to determine whether the enterprise is a U.S. affiliate of the foreign person for purposes of reporting.

A foreign parent's percentage of indirect ownership interest in a given U.S. business enterprise is the product of the direct ownership percentage of the foreign parent in the first U.S. business enterprise in the ownership chain times that first enterprise's direct ownership percentage in the second U.S. business enterprise times each succeeding direct ownership percentage of each other intervening U.S. business enterprise in the ownership chain between the foreign parent and the given U.S. business enterprise.

If there is more than one line of ownership from the foreign parent, or if other members of the affiliated foreign group hold direct or indirect lines of ownership to the U.S. business enterprise, then all ownership interest lines must be summed to determine if the U.S. business enterprise is a U.S. affiliate of a foreign person.

- D. Accounting methods and records**—Generally accepted U.S. accounting principles should be followed, unless otherwise specified. Corporations should generally use the same methods and records that are used to generate reports to stockholders except where the instructions indicate a variance.

- E. Consolidated reporting by U.S. affiliate**—A U.S. affiliate must file on a fully consolidated domestic (U.S.) basis, including in the full consolidation all of its foreign parent's other U.S. affiliates in which it directly or indirectly owns more than 50 percent of the outstanding voting interest. Hereinafter the fully consolidated entity is considered to be one U.S. affiliate.

A separate BE-12 report may be filed by a U.S. affiliate that is more than 50 percent owned by another U.S. affiliate if the first U.S. affiliate is not normally fully consolidated due to unrelated operations or lack of control and provided that written permission has been requested from and granted by BEA.

If a U.S. affiliate is not fully consolidated in its U.S. parent's BE-12 report, it must be listed on Supplement B of the U.S. parent's Form BE-12 and must file its own BE-12 report.

Foreign subsidiaries, branches, or other foreign operations or equity investments of a U.S. affiliate are **not** to be included on a fully consolidated basis, but are to be included only as provided under III.H.

- F. Aggregation of real estate investments**—A foreign person holding real estate investments that are foreign direct investments in the United States must aggregate all such holdings for the purpose of applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if they individually would be exempt.

- G. Exemption**—A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file a BE-12 report if:

1. Each of the following three items for the U.S. affiliate (not the foreign parent's share) was between — \$1,000,000 and + \$1,000,000 during the reporting period:
 - a. Total assets;
 - b. Sales or gross operating revenues, excluding sales taxes, and
 - c. Net income after provision for U.S. income taxes;

and

2. The U.S. affiliate did not own 200 acres or more of U.S. land during the reporting period (if the U.S. affiliate owned 200 acres or more of U.S. land, it must report regardless of the value of the three items listed above).

If a U.S. business enterprise is a U.S. affiliate but is not required to file a completed Form BE-12 because it falls below the exemption level, then it must complete and file a "Claim for Not Filing a Form BE-12" with item 5 of the "Claim" marked and the information requested in item 5 filled in. (The Claim is on the last page of Form BE-12 and should be detached for filing.)

- H. Method of accounting for equity investments in business enterprises that are not fully consolidated**—A U.S. affiliate's equity investment in all foreign business enterprises and in U.S. business enterprises that are not fully consolidated should be accounted for as detailed below. Foreign business enterprises must not be fully consolidated with the U.S. affiliate, no matter what the percentage ownership. When equity investments are included under the equity method, intercompany account items **must not** be eliminated.
1. Investment in those business enterprises owned 20 percent or more should be reported using the equity method. However, immaterial investments may be reported using the cost basis provided this method is consistent with normal reporting practice.
 2. Investment in those business enterprises owned less than 20 percent should be reported using the cost method.
- I. Changes in the reporting entity**—Changes in the consolidated reporting entity that occurred during the FY 1980 reporting period must **not** result in restatement of close FY 1979 balances. The close FY 1979 balances for balance sheet or other items should represent the reporting entity as it existed at the close of FY 1979. This principle applies throughout the report form; for example, in Part III, close FY 1979 intercompany account balances should be those between the foreign parent and the U.S. affiliate as it actually existed at the close of FY 1979.
- J. Reporting by unincorporated U.S. affiliate:**
- Directly-owned**—A separate BE-12 report shall be filed by each unincorporated U.S. affiliate, including a branch, which is directly owned 10 percent or more by a foreign person; two or more such directly-owned U.S. affiliates may not be combined on a single Form BE-12. The only exception is for U.S. affiliates that are real estate investments (see Special Instructions, Real Estate).
- Indirectly-owned**—An indirectly-owned unincorporated U.S. affiliate owned more than 50 percent by another U.S. affiliate should be fully consolidated on the report with the U.S. affiliate that holds the ownership interest in it. Otherwise, a separate report is required for each indirectly-owned unincorporated U.S. affiliate, except real estate.
- K. Industry and export and import trade classifications**—A list and explanation of the industry classifications and export and import trade classification used are given in the revised "*Direct Investment Industry and Foreign Trade Classifications Booklet*," BE-799, which is included as part of the BE-12 package.

- L. Number of BE-12 Part IIIs, Investment and Transactions Between U.S. Affiliate and Foreign Parent, to be filed**—A separate Part III is required to be filed by the U.S. affiliate for each foreign parent that the affiliate had during its 1980 fiscal year. If multiple Part III's are required because there was more than one foreign parent, the foreign parent that held the largest percentage of direct ownership interest at yearend should be reported on the Part III that is included in the BE-12 report itself. Each other foreign ownership line should be reported on a Form BE-12, Part III-ADDITIONAL. If copies of BE-12, Part III-ADDITIONAL are not available, reproduced copies of BE-12 Part III may be used as necessary.
- M. Bearer shares**—If the ownership in a U.S. affiliate by any owner in the ownership chain up to and including the ultimate beneficial owner (UBO) is represented by bearer shares, the requirement to disclose the information regarding the UBO remains with the reporting U.S. affiliate, except where a company in the ownership chain has publicly traded bearer shares. In that case, identification of the UBO may stop with the identification of a company whose capital stock is represented by the publicly traded bearer shares. For closely held companies with non-publicly traded bearer shares, identifying the foreign parent or the UBO as "bearer shares" is not an acceptable response. The U.S. affiliate must pursue the identification of the UBO through managing directors, or any other official or intermediary.
- N. Separate filing of information by foreign parent or ultimate beneficial owner**—Where information is requested concerning the foreign parent or ultimate beneficial owner (UBO); if the foreign parent or UBO does not wish to make the information available to the U.S. affiliate for inclusion in the report, it may furnish it separately to BEA. In doing so, it must completely identify the U.S. affiliate BE-12 report to which it refers, the Part III (or Part III-ADDITIONAL) to which it pertains, separately reference the items to which the information pertains, and give an address (and phone number if in the United States) where the foreign parent or UBO can be contacted.
- O. Required information not available**—All reasonable efforts should be made to obtain information required for reporting. Every question on each form should be answered, except where specifically exempt. When only partial information is available, an appropriate indication should be given.
- P. Estimates**—If actual figures are not available, estimates should be supplied and labeled as such. When data items cannot be fully subdivided as required, totals and an estimated breakdown of the totals should be supplied.
- Q. Specify**—When "specify" is included in certain data items, the type and dollar amount of the major items included must be given for at least the items mentioned in the line instruction.
- R. Space on form insufficient**—When space on a form is insufficient to permit a full answer to any item, the required information should be submitted on supplementary sheets, appropriately labeled and referenced to the item number and the form.

IV. Special Instructions

- A. Insurance companies**—When there is a difference, the financial and operating data in this report are to be prepared on the same basis as an annual report to stockholders, rather than on the basis of an annual statement to an insurance department. Valuation should be according to normal commercial accounting procedures, not at the rates promulgated by the

National Association of Insurance Commissioners. Include assets not acceptable for inclusion in the annual statement to an insurance department.

ITEM

- 35 Trade accounts and trade notes receivable, current—Include current items such as agents' balances, uncollected premiums, amounts recoverable from reinsurers, and other current notes and accounts receivable (net of allowances for doubtful items) arising from the ordinary course of business.
- 46 Trade accounts and trade notes payable, current—Include current items such as loss liabilities, policy claims, commissions due, and other current liabilities arising from the ordinary course of business. Policy reserves are to be included in "Other non-current liabilities," item 49, unless they are clearly current liabilities.
- 56 Sales or gross operating revenues, excluding sales taxes—Include items such as earned premiums, annuity considerations, gross investment income, and items of a similar nature. Exclude income from unconsolidated affiliates that is to be reported in item 58 or 59.
- 63 Cost of goods sold—costs and expenses relating to operation—Include costs relating to sales or gross operating revenues, item 56, such as policy losses incurred, death benefits, matured endowments, other policy benefits, increases in liabilities for future policy benefits, other underwriting expenses, and investment expenses.

B. Banks—A specialized report form has been adopted for U.S. affiliates in banking (including bank holding companies); that is, for U.S. affiliates over 50 percent of whose total revenues are generated by activities classified in industry code 600. Use of specialized Form BE-12 BANK is at the discretion of BEA; in situations where its possible use is not clear-cut, permission must be secured from BEA in advance of filing. Non-bank subsidiaries must not be consolidated with a bank or bank holding company on Form BE-12 BANK, but must be reported separately on standard Form BE-12. An exception is that activities of subsidiaries that are not banks but that provide support to their bank parent, such as a real estate subsidiary set up to hold the office building occupied by the bank parent, are considered bank activities.

The specialized report form, where its use is permitted, stands in place of the standard form, and the instructions given should be so construed.

- C. Airlines and ship operators**—U.S. stations, ticket offices, and terminal and port facilities of foreign airlines and ship operators which provide services **only** to the foreign airlines' and ship operators' own operations are not required to be reported. Reports are required when such enterprises produce significant revenues from services provided to unaffiliated persons.
- D. Railroad transportation companies**—Railroad transportation companies should include only the net annual balances for interline settlement items (car hire, car repair, freight revenues, switching revenues, and loss and damage settlements) in items 35, 43, 46, 312 and 313. Receipts or payments of the same interline settlement items should be excluded from items 340 and 342.
- E. Real estate**—In the International Investment Survey Act of 1976, the ownership of real estate is defined to be a business enterprise, and if foreign-owned, is a U.S. affiliate of a foreign person. A BE-12 report is required unless the enterprise is otherwise exempt.

Residential real estate held exclusively for personal use and not for profitmaking purposes is not subject to the reporting requirements. A residence which is an owner's primary residence that is then leased by the owner while outside the United States but which the owner intends to reoccupy, is considered real estate held for personal use.

Ownership of U.S. residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the owner(s) of the corporation, is considered to be real estate held for personal use and therefore not subject to the reporting requirements.

A foreign person holding real estate investments that are business enterprises reportable as foreign direct investment in the United States must aggregate all such holdings for the purpose of applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if they individually would be exempt. A single report form should be filed to report the aggregated holdings. Nevertheless, if preferred, separate reports may be filed, but the aggregate of holdings must be used for the purpose of applying the exemption level tests. If separate reports are filed, they must be filed as a group and notice given that they are all for one owner.

In Part I, Identification of U.S. Affiliate, for real estate investments being reported, BEA is not seeking a legal description of the property, nor necessarily the address of the property itself. Since there may be no operating business enterprise as such for the investment, what is wanted is a consistently identifiable investment (i.e., U.S. affiliate) together with an address to which report forms can be mailed so that the investment (affiliate) can be reported on a consistent basis from survey to survey, or period to period. Thus, in item 1 of Form BE-12, the "name and address" of the U.S. affiliate might be:

XYZ Corp. N.V., Real Estate Investments
c/o B&K Inc., Accountants
120 Major Street
Miami, Florida XXXXX

If the investment property has a name, such as Sunrise Apartments, Acme Building, etc., the name and address in item 1 of Form BE-12 might be:

Sunrise Apartments
c/o ABC Real Estate
120 Major Street
Miami, Florida XXXXX

BEA will accommodate foreign owners that wish to have report forms sent directly to them. However, owners should be aware that extra time consumed in mailing to and from a foreign place may make meeting filing deadlines difficult.

There are questions throughout the report form that may not be applicable to certain types of real estate affiliates—questions such as the employer identification number (Part I, item 4), or, for unimproved land held as an investment, number of employees (Part II, item 119); and all of Part II, Section J, Exports and Imports of U.S. Affiliate. In such cases, the items should be marked "none".

If a foreign person has a direct or indirect voting ownership interest of 10 percent or more in a joint venture, partnership, etc. that is formed to own and hold, develop, or operate real estate, the joint venture, partnership, etc. in its entirety, not just the foreign person's share, is a U.S. affiliate and must be reported as set out below.

- a. If the foreign interest in such a U.S. affiliate is directly held by the foreign person, then a BE-12 report must be filed by the affiliate (see however, the discussion above concerning aggregating such investments).
- b. If such a U.S. affiliate is owned more than 50 percent by another U.S. affiliate, the former affiliate must be fully consolidated in the BE-12 report of the latter affiliate.
- c. If such a U.S. affiliate is owned 50 percent or less by another U.S. affiliate, a separate BE-12 report must be filed by the former affiliate and the latter affiliate, in its BE-12 report, must show only its equity investment in the former affiliate.

Foreign owners of farms, which the owners do not operate themselves, should prepare the income statement and related items based on the extent to which the income from the farm accrues to, and the expenses of the farms are borne by, the owner. Generally this means that to the extent the risk of the operation falls on the owner, then the income, expenses and the gain (loss) assignable to the owner or to the farm itself should all be shown in the income statement and related items. For example, even though the operator and other workers on the farm are hired by a management firm, if their wages and salaries are assigned to and borne by the farm operation being reported, then the operator and other workers should be reported as employees of that farm operation and the wages and salaries should be included as an expense in the income statement. **EXAMPLES:**

1. If the farm is leased to an operator for a fixed fee, then the owner should report the fixed fee as his "sales or gross operating revenue," and should report the non-operating expenses that he may be responsible for, such as real estate taxes, interest on loans, etc., as expenses in the income statement.
2. If the farm is operated by another person on a share arrangement whereby income and expenses are shared by the owner and operator in some ratio, only the owner's share of income should be shown in "sales or gross operating revenues," and only the owner's share of operating expenses and non-operating expenses should be shown elsewhere in the income statement, and in related items, as appropriate.
3. If the farm is operated by a management firm that oversees the operation of the farm and hires an operator, but the operating income and expenses are assigned to the owner, the income and expenses so assigned should be shown in the requested detail in the income statement, and related items, as appropriate. (The report should not show just one item, i.e., the net of income less the management fee, where the management fee includes all expenses.)

F. Estate, trusts, and intermediaries:

A **foreign estate** is a person and therefore may have direct investment, and the estate, not the beneficiary, is considered to be the owner.

A **trust** is a person, but is not a business enterprise. The trust shall be considered the same as an intermediary and reporting should be as outlined below. For reporting purposes, the

beneficiary(ies) of the trust, or the creator(s) of the trust in the situation detailed in the next sentence, or if there is, or may be, a reversionary interest, shall be considered to be the owner(s) of the investments of the trust for determining the existence of direct investment. When a corporation or other organization creates a trust designating its shareholders or members as beneficiaries, the creating corporation or organization shall be deemed to be the owner of the investments of the trust, or succeeding trusts where the presently existing trust had evolved out of a prior trust, for the purposes of determining the existence and reporting of direct investment.

This procedure is adopted in order to fulfill the statistical purposes of this survey and does not imply that control over an enterprise owned or controlled by a trust is, or can be, exercised by the beneficiary(ies) or creator(s).

Intermediary—

- a. If a particular foreign direct investment in the United States is held, exercised, administered, or managed by a U.S. intermediary for the foreign beneficial owner, such intermediary shall be responsible for reporting the required information for, and in the name of, the U.S. affiliate, and shall report on behalf of the U.S. affiliate or shall instruct the U.S. affiliate to submit the required information. Upon so instructing the U.S. affiliate, the intermediary shall be released from further liability to report provided it has informed this Bureau of the date such instructions were given and the name and address of the U.S. affiliate, and has supplied the U.S. affiliate with any information in the possession of, or which can be secured by, the intermediary that is necessary to permit the U.S. affiliate to complete the required reports. When acting in the capacity of an intermediary, the accounts or transactions of the U.S. intermediary with a foreign beneficial owner shall be considered as accounts or transactions of the U.S. affiliate with the foreign beneficial owner. To the extent such transactions or accounts are unavailable to the U.S. affiliate, they may be required to be reported by the intermediary.
- b. If a foreign beneficial owner holds a U.S. affiliate through a foreign intermediary, the U.S. affiliate may report the intermediary as its foreign parent but, when requested, must also identify and furnish information concerning the foreign beneficial owner. Accounts or transactions of the U.S. affiliate with the foreign intermediary shall be considered as accounts or transactions of the U.S. affiliate with the foreign beneficial owner.

G. Partnerships—Limited partners do not have voting rights in a partnership and therefore cannot have a direct investment in a partnership; their investment is considered to be portfolio investment. Determination of the existence of direct investment in a partnership shall be based on the country of residence of, and the percentage control exercised by, the general partner(s), although the latter may differ from the financial interest of the general partner(s).

H. Determining place of residence and country of jurisdiction of individuals—An individual will be considered a resident of, and subject to the jurisdiction of, the country in which physically located, subject to the following qualifications:

1. Individuals who reside, or expect to reside, outside their country of citizenship for less

than one year are considered to be residents of their country of citizenship.

2. Individuals who reside, or expect to reside, outside their country of citizenship for one year or more are considered to be residents of the country in which they are residing, except as provided in H.3.
3. Notwithstanding paragraph H.2., if an owner or employee of a business enterprise resides outside the country of location of the enterprise for one year or more for the purpose of furthering the business of the enterprise, and the country of the business enterprise is the country of citizenship of the owner or employee, then such owner or employee shall nevertheless be considered a resident of the country of citizenship provided there is the intent to return within a reasonable period of time.
4. Individuals and members of their immediate family who are residing outside their country of citizenship as a result of employment by the government of that country—diplomats, consular officials, members of the armed forces, etc.—are considered to be residents of their country of citizenship.

V. Response Required When Contacted by BEA

The publication in the Federal Register of the notice implementing this survey is considered legal notice to covered U.S. business enterprises of their obligation to report. Therefore, a report is required from persons subject to the reporting requirements of the BE-12 survey, whether or not they are contacted by BEA. Also, a person, or their agent, to whom a BE-12 report form is sent by BEA, must respond in writing pursuant to Section 806.4 of 15 CFR, Chapter VIII. This may be accomplished either by filing a completed Form BE-12 on a timely basis or, if applicable, by completing and returning the "Claim for Not Filing a Form BE-12," which is included as the last page of Form BE-12, and which is due within 30 days of the date the BE-12 was sent by BEA.

VI. Filing the BE-12

- A. Due date**—A fully completed and certified Form BE-12, including all Part III ADDITIONAL, is due to be filed with BEA not later than August 15, 1981.

A U.S. person that is sent a Form BE-12, but that is exempt or not subject to the reporting requirements must file a "Claim for Not Filing a Form BE-12" within 30 days of the date the BE-12 was sent by BEA. (See V. above.) Any other U.S. person that is a U.S. affiliate but that is exempt from completing Form BE-12, must file a "Claim for Not Filing a Form BE-12" within 30 days of the publication in the Federal Register of the notice implementing this survey.

- B. Extension**—Requests for an extension of the reporting deadline will not normally be granted. However, in a hardship case, a written request for an extension will be considered provided it is received at least 15 days prior to the due date of the report and enumerates substantive reasons necessitating the extension. BEA will provide a written response to such requests.
- C. Assistance**—If there are any questions concerning the report, telephone (202) 523-0632 or (202) 523-0547 for assistance.
- D. Annual stockholders' report**—Business enterprises issuing annual reports to stockholders are to furnish a copy of their FY 1980 annual report when filing the BE-12 report.

- E. **Number of copies**—A single copy of the BE-12, including any Supplements, is to be filed with BEA. This should be the copy with the address label in Part I, if such a labeled copy has been provided by BEA. You must also retain a file copy of the BE-12 report for five years to facilitate resolution of any questions that BEA may have concerning your report. (Both copies are protected by law; see statement on confidentiality in I.D.)
- F. **Where to send report**—Return the report to U.S. Department of Commerce, Bureau of Economic Analysis BE-50(IN), Washington, D.C. 20230.

VII. Instructions for Specific Sections of the Report Form

- A. **Employment and employee compensation**—Employment and employee compensation data must be based on payroll records and relate to activities during the reporting period. The employment and employee compensation data must cover only activities that were charged as an expense on the income statement, charged to inventories, or capitalized *during* the reporting period. Do not include data related to activities of prior periods, such as those capitalized or charged to inventories in prior years.
1. **Employment** is the average number of employees for the reporting period, including part time employees but excluding home workers and independent sales personnel who are not employees. If possible, the average for the reporting period should be computed as the average of the number of persons on the payroll at the end of each pay period, month or quarter, during the reporting period. Employment at the end of the reporting period may be used as an estimate of average employment only if employment throughout the reporting period did not vary significantly due to seasonal operations, a strike, temporary shutdowns, etc.
 2. **Production workers**—Those employees most directly connected with carrying out the activities of the business being reported, up to and including working foremen, but excluding other supervisory employees. They are those employees involved in the physical production of goods, handling and storage of goods, related services (e.g., maintenance and repair), and auxiliary production for plant's own use (e.g., power plant).
 3. **Employee compensation** consists of wages and salaries of employees and employer expenditures for all employee benefit plans.
 - a. **Wages and salaries** are the gross earnings of all employees before deduction of employees' payroll withholding taxes, social insurance contributions, group insurance premiums, union dues, etc. Include time and piece rate payments, cost of living adjustments, overtime pay and shift differentials, bonuses, profitsharing amounts, and commissions. Exclude commissions paid to independent personnel who are not employees.

Wages and salaries include direct payments by employers for vacations, sick leave, severance (redundancy) pay, etc. Exclude payments made by, or on behalf of, benefit funds rather than by the employer. (Employer contributions to benefit funds are included in "employee benefit plans".)

Wages and salaries include in-kind payments, valued at their cost, that are **clearly and primarily of benefit to the employees as consumers**. Do not include expendi-

tures that benefit employers as well as employees, such as for plant facilities, employee training programs, and reimbursement for business expenses.

- b. **Employee benefit plans**—Employer expenditures for all employee benefit plans, including those required by government statute, those resulting from a collective-bargaining contract, or those that are voluntary. Employee benefit plans include Social Security and other retirement plans, life and disability insurance, guaranteed sick pay programs, workers' compensation insurance, medical insurance, family allowances, unemployment insurance, severance pay funds, etc. If plans are financed jointly by the employer and the employee, only the contributions of the employer should be included.

- 4. **Hours worked** by production workers: Include standby or reporting time; exclude hours paid for holidays, vacations, sick leave, or other paid leave.

B. U.S. merchandise exports and imports—The data on U.S. merchandise trade between U.S. affiliates and foreigners must be reported on a "shipped" basis, i.e., on the basis of when, where, and to (or by) whom the goods were shipped, irrespective of to (or by) whom the goods were billed or charged. It may be necessary to obtain the shipment data from shipping and receiving, rather than from accounting, records.

The merchandise trade categories given in the **Direct Investment Industry and Foreign Trade Classifications Booklet** are not the same as the SIC categories used to classify your company by industry. Please check the trade category descriptions to facilitate accurate answers to the trade questions. (In particular, note that for the trade data, parts and accessories for transportation equipment are, in important instances, classified outside the transportation equipment category.)

- 1. **U.S. exports and imports** refer to physical movements of goods between the customs area of the United States and the customs area of a foreign country. Consigned goods must be included as a shipment or receipt of merchandise, even though not normally recorded as sales or purchases when initially consigned.
- 2. **Only goods shipped** between the United States and a foreign country in the U.S. affiliate's 1980 fiscal year should be included, regardless of when the goods were charged or consigned. For example, capital goods shipped by the U.S. affiliate to a foreign parent in FY 1980, that were charged or consigned to the foreign parent in FY 1981, should be included; but such goods shipped in FY 1979 that were charged or consigned to the foreign parent in FY 1980 should be excluded.
- 3. **U.S. exports** should be valued f.a.s. (free along side) at the U.S. port of exportation. This includes costs incurred up to the point of loading the goods aboard the export carrier including the selling price at the interior point of shipment (or cost if not sold), packaging costs, and inland freight and insurance. It excludes all subsequent costs, such as loading costs, freight and insurance from the U.S. port of exportation, etc.
- 4. **U.S. imports** should be valued at the contract price, adjusted to an f.a.s. foreign-port-of-exportation basis. This includes all costs incurred up to the point of loading the goods

aboard the export carrier, including the selling price at the interior point of shipment (or cost if not sold), packaging costs, and inland freight and insurance. It excludes all subsequent costs, such as loading costs, freight and insurance from the foreign port of exportation, etc.

5. **"Products of shipper"** refers to merchandise which has been produced (i.e., grown, extracted, processed, assembled, or manufactured) by the shipper, or which has been physically changed by the shipper so as to increase the value of the merchandise. Merchandise shipped in essentially the same condition as when purchased is not considered a product of the person shipping the merchandise.
6. **Goods shipped** by an independent carrier or a freight forwarder at the expense of, or on behalf of, a business enterprise, are shipments of that business enterprise.
7. **Country of ultimate destination or origin**—The country of ultimate destination is the country where the goods are to be consumed, further processed, or manufactured, as known to the shipper at the time of exportation. If the shipper does not know the country of ultimate destination, the shipment is credited to the last country to which the shipper knows that the merchandise will be shipped in the same form as when exported. The country of origin is the country where the goods were grown, mined, or manufactured. In instances where the country of origin cannot be determined, the transactions are credited to the country of shipment.

C. **Distribution of selected data by State**—The schedule of employment, wages and salaries, land and other property, plant, and equipment by State covers the 50 States, the District of Columbia, and all territories and possessions of the United States. Include in this schedule only data pertaining to those U.S. business enterprises that are fully consolidated into the reporting U.S. affiliate; foreign business enterprises or operations, whether incorporated or unincorporated, should not be consolidated with the reporting U.S. affiliate and no data for them should be included. Exclude data for employees permanently located outside the United States. The "foreign" category is primarily for use in reporting movable fixed assets temporarily outside the United States or for reporting any foreign fixed assets carried directly on the U.S. affiliate's books.

1. **Location of employees or of an asset** is the U.S. State, territory, or possession in which the person is permanently employed, or in which the land or other property, plant, and equipment is physically located and to which property taxes, if any, on such assets are paid. In the case of equipment which may reside in more than one location during the reporting period, such as transportation equipment, location of the asset is to be—
 - a. The State, territory, or possession to which property taxes, if any, were paid.
 - b. If no tax was paid, the State, territory, or possession in which the asset was physically located at the end of the reporting period. (If the plant and equipment is movable, and is temporarily located outside the United States, enter in the "foreign" category.)
2. **Valuation of property, plant, and equipment**—Land and other property, plant, and equipment are to be valued at historical cost before any allowances for depreciation, depletion, and like charges.

3. **Classification of land and other property, plant, and equipment by use category**—For purposes of this survey, land and other property, plant, and equipment are classified according to various use categories. If a given asset can be classified in more than one of the use categories, the entire asset should be considered to fall within the category best describing its primary use. If not in actual use during the reporting period, classify by expected or intended use.

Appendix D

International Capital Form S
DEPARTMENT OF THE TREASURY
Office of the Assistant Secretary
for Economic Policy
Revision March 1971/January 1977 /April 1978

Form Approved
OMB No. 48-R0090

INSTRUCTIONS FOR PREPARATION OF MONTHLY FORM S PURCHASES AND SALES OF "LONG-TERM" SECURITIES BY "FOREIGNERS"

PART I—GENERAL INSTRUCTIONS

A. INTRODUCTION

The purpose of this report is to gather timely and reliable information on international capital movements.

This report form is designed to cover transactions in "long-term" securities with "foreigners." For purposes of reporting, all of the following transactions are considered to be transactions with "foreigners": (1) transactions in "long-term" securities executed in the United States (as defined in section E.1 below) for account of "foreigners"; and (2) transactions in "long-term" securities executed abroad for your own account and for the account of your domestic customers, including partners. (Thus, for example, a purchase of "long-term" securities abroad for your own account or for the account of your domestic customer should be recorded as a sale by a "foreigner," and conversely, a sale of "long-term" securities abroad for your own account or for the account of a domestic customer should be reported as a purchase by a "foreigner.") Figures reported for such transactions should represent the total amount of money debited or credited as of the ledger date (i.e., the cost of purchase plus commissions, etc., or the proceeds of sales less commissions, tax, etc.).

This report is required by law (12 U.S.C. 95a; 22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 6560; E.O. 10033; 31 C.F.R. 128). Failure to report can result in a civil penalty not exceeding \$10,000 (22 U.S.C. 3105). Willful failure to report can result in criminal prosecution and upon conviction a fine of not more than \$10,000, or, if a natural person, imprisonment for not more than ten years, or both. Any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both (12 U.S.C. 95a; 31 C.F.R. 128.4(a)).

Data reported on this form will be held in confidence by the Department of the Treasury and the Federal Reserve Banks acting as fiscal agents of the Treasury. The data reported by individual respondents will not be published or otherwise publicly disclosed. Aggregate data derived from reports on this form may be published or otherwise disclosed in a manner which will not reveal the amounts reported by any individual respondent. Data reported by individual respondents may be made available to other Federal agencies, insofar as authorized by the Federal Reports Act (44 U.S.C. 3501 *et seq.*) and the International Investment Survey Act of 1976 (22 U.S.C. 3101 *et seq.*).

B. WHO MUST REPORT

1. All banks, banking institutions (including bank holding companies), brokers, dealers or other persons in the United States who on their own behalf or on behalf of their customers engage in transactions in "long-term" securities directly with "foreigners," as defined in these instructions, are required to report monthly on this form. Reporting institutions should include on this form the figures for all departments within the institution which have reportable transactions and the figures for all of their branches in the United States.
2. When two reporting institutions are involved in the completion of a transaction in "long-term" securities with "foreigners," the following instructions should be carefully noted, in order that the reporting of that transaction may neither be duplicated nor completely omitted:
 - (a) Transactions involving either the sale or purchase of domestic securities for "foreign" account should be reported by the bank, banking institution, broker or dealer acting directly by order of the "foreigner."
 - (b) Transactions involving either the sale or the purchase (including the redemption) of "foreign" securities for the account of "foreigners" should be reported by the bank, banking institution, broker or dealer acting directly by order of the "foreign" seller or "foreign" purchaser.
3. The U.S. managing underwriter of an underwriting group acting as agent in handling the flotation of a new foreign security issue should report as sales by "foreigners" only the portion of the issue sold to domestic members of the underwriting group and the amount of sales to the managing underwriter's own domestic customers. The managing underwriter of an underwriting group for a new domestic security issue should report as purchases by "foreigners" the amount taken by "foreign" underwriting members as well as the amount of sales to the managing underwriter's own foreign customers. *NOTE:* Managing underwriters for new foreign issues which can be offered for sale only to persons other than U.S. residents should exclude from their reported purchases by "foreigners" their subsequent sales of these new issues to other "foreigners." If portions of such new issues remain unsold at the termination of the initial offering, as specified in the underwriting agreement, the managing underwriter or other members of the underwriting group who retain the unsold securities for their own account should report the unsold securities as sales by "foreigners" (to members of the underwriting group). Subsequent disposition of the securities to "foreigners" are reportable as purchases by "foreigners."
4. Any bank, banking institution, broker, or dealer acting as an intermediary in the private placement of domestic securities with foreign investors or of foreign securities with domestic and foreign investors should report the entire amount of the transaction. The intermediary should also provide for the reporting of any payments associated with delayed take-downs under private placements.

C. EXEMPTIONS

A report for any one month need not be filed by a "person," otherwise required to report, if both the grand total of purchases and the grand total of sales of "long-term" securities, for its own account or for the account of others in transactions with "foreigners," amounted to less than \$500,000 during the month covered by the report.

D. FILING OF REPORTS

Reports on Form S should be submitted not later than 15 days following the month to which the report applies.

Reports of any bank or banking institution should be filed with the Federal Reserve Bank of the District in which the bank or banking institution is located.

Reports of brokers, dealers and persons other than banks and banking institutions should be filed with the Federal Reserve Bank of New York. Reports should be mailed to:

International Reports Division
International Research Department
Federal Reserve Bank of New York
33 Liberty Street
New York, New York 10045

E. DEFINITIONS

1. "United States." For purposes of this report, the term "United States" shall mean the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the following: American Samoa, the Canal Zone, Guam, Midway Island, the Virgin Islands, and Wake Island.
2. For purposes of this report, "person" shall include an individual, partnership, association, corporation or other organization.
3. "Foreigner." For purposes of this report, "foreigner" shall include:
 - (a) any individual, including a citizen of the United States, domiciled outside the United States.
 - (b) any partnership, association, corporation or other organization created or organized under the laws of a foreign country, excepting branches and agencies thereof located in the United States.
 - (c) any branch, subsidiary or other allied organization within a foreign country of a partnership, association, corporation or other organization created or organized under the laws of a foreign country or of the United States. Thus, for example, branches of American banks, banking institutions, brokers and dealers (including your own branches) located in foreign countries should be considered "foreigners," and the branches, subsidiaries and agencies located in the United States of foreign banks, banking institutions, brokers and dealers should consider themselves as U.S. persons and, in turn, should consider their head offices and branches of such head offices outside the United States as "foreigners."
 - (d) any government of a foreign country and any subdivision, agency or instrumentality thereof, including all "foreign official institutions," *even though located in the United States.* (See definition in subsection 4 below.)
 - (e) any official international or regional organization, or subordinate or affiliated agency thereof, created by treaty or convention between sovereign states, *even though located in the United States*; and any private relief, philanthropic or other organization of an international or regional character with headquarters abroad and with a membership of organizations from more than one country.
 - (f) persons in the United States, to the extent that such persons are acting on behalf of, for the account of, or for the benefit of "foreigners" as described in subsections (a) through (e) above, except other reporting institutions such as domestic banks, corporations, and branches and agencies of foreign banks and corporations required to report on this form. (In case of doubt in a particular case as to whether a second institution is a reporting institution, consult the Federal Reserve Bank of the District in which you are located if you are a bank or banking institution; persons other than banks and banking institutions should consult the Federal Reserve Bank of New York.) Transactions for the account of a domestic trustee or nominee, except another reporting institution, known to be acting on behalf of a "foreigner" should be reported by the bank, banking institution, or broker acting for the account of such trustee or nominee.
4. "Foreign official institution." For purposes of this report, the term "foreign official institution" shall include central governments of foreign countries and of their possessions and recognized central banks of issue. The Treasury Department has prepared a list of "foreign official institutions" available from the Federal Reserve Bank of the District in which you are located if you are a bank or banking institution or from the Federal Reserve Bank of New York if you are a nonbank firm. The term "foreign official institution" shall include the following:
 - (a) the treasuries, including ministries of finance, or corresponding departments of national governments; central banks, including all departments thereof; stabilization funds, including official exchange stabilization funds, exchange control offices, or other governmental exchange authorities; and fiscal agents of the national governments which have as an important part of their functions activities similar to those of a treasury, central bank or stabilization fund. *EXCEPTION:* Branches and agencies in the United States of "foreign official banking institutions" shall be considered "domestic" institutions for purposes of this report.
 - (b) diplomatic and consular establishments and other departments and agencies of national governments, such as army and navy departments, purchasing commissions and state trading organizations.
 - (c) any international or regional organization, or subordinate or affiliated agency thereof, created by treaty or convention between sovereign states. The term "foreign official institution," however, shall not include nationalized or other government-owned banks or corporations unless such banks or corporations otherwise fall within one of the descriptive categories set forth in subsection 4(a) above.
5. "Securities." For purposes of this report, the term "securities" should be interpreted broadly to include rights, warrants, options and scrip, as well as stocks (common and preferred) and bonds, debentures and similar obligations, and should include privately as well as publicly offered issues. "Long-term" securities. The term "long-term" securities is used to define those having no contractual maturity (e.g., stocks) or a maturity of more than one year from the date of issuance. Such securities fall within the scope of this report even though they may mature in one year or less from the date of this report.

F. EXCLUSIONS FROM REPORTING

1. Initial offerings of new foreign issues that can be offered for sale only to persons other than United States residents should not be reported on this form. (See NOTE to section B.3 above.)
2. Transactions in long-term securities under repurchase and resale agreements should not be reported on this form. For instance, a U.S. banking institution, broker, or dealer may enter into repurchase agreements with a "foreigner" to "sell" securities to the "foreigner" with an agreement to repurchase the securities for a stated price in a specific number of days. Similarly, a "foreigner" may "sell" securities to a U.S. bank, banking institution, broker, or dealer for a stated number of days, agreeing to repurchase the securities at a set price at the end of the period. For purposes of this report, such transactions are not to be reported as outright purchases and sales of the securities themselves; rather, the repurchase agreements are to be considered as short-term liabilities to, or short-term claims on, "foreigners," collateralized by the underlying securities. Accordingly, agreements under which you "sell" long-term securities to "foreigners" and will reacquire the securities are not to be reported on Form S, but should be reported as "Other Liabilities" in the appropriate columns on Form BL-1. Conversely, agreements under which you acquire securities and will sell them back to foreigners are not to be reported on Form S, but should be reported as claims on "foreigners" on monthly Form BC and on quarterly Form BQ-1 in the appropriate columns.
3. Transactions in securities with a contractual maturity of one year or less, such as United States Treasury bills and certificates of indebtedness, should not be reported on this form. (However, holdings of such securities denominated in dollars for the account of "foreigners" should be reported in the appropriate columns on Form BL-2. Respondent banks should report their holdings of foreign securities denominated in dollars and having a contractual maturity of one year or less in the appropriate columns on monthly Form BC and quarterly Form BQ-1. Holdings of such securities for banks' domestic customers are reportable on Form BQ-1. Holdings of "short-term" foreign securities denominated in foreign currencies are reportable on Form BQ-2. U.S. nonbanking firms that do not hold "short-term" foreign securities through a U.S. bank must report their claims on Forms C-1/2 and C-3, as appropriate.)
4. Transactions in participations in loans of the Export-Import Bank of Washington, the International Bank for Reconstruction and Development, the Inter-American Development Bank, and the Asian Development Bank, and other similar lending institutions, with or without the guaranty of the lending institutions, should not be reported on this form. (The outstanding amounts of such participations should be reported on monthly Form BC and quarterly Form BQ-1, or on Form C-1/2, as appropriate.)

G. METHOD OF REPORTING OPPOSITE FOREIGN COUNTRIES AND INTERNATIONAL AND REGIONAL ORGANIZATIONS

In general, transactions with "foreigners" should be reported opposite the foreign country or geographical area in which the "foreigner" is domiciled. Transactions with "foreigners" in territories, possessions and other non-metropolitan areas of a foreign country should be reported opposite the geographical area in which the "foreigner" is domiciled and not opposite the parent country. For example, transactions with "foreigners" in the Netherlands Antilles should be reported opposite the Netherlands Antilles and not opposite the Netherlands.

Transactions with foreign branches or agencies of a "foreign official institution" should be reported opposite the country to which the "official institution" belongs if the branches are not themselves acting as "official institutions" for the countries in which they are located. For example, the account of a South American branch of a European government purchasing commission should be reported opposite the European country. Transactions with a U.S. branch or agency of a "foreign official institution" should be reported opposite the country to which the "official institution" belongs. (EXCEPTION: Branches or agencies in the United States of "foreign official banking institutions" shall be considered "domestic" institutions.) Transactions with a "foreign official institution's" branch which is acting as an "official institution" for the country in which the branch is located should be reported opposite that country, while transactions with the branch's head office in another country should be reported opposite the country in which the head office is located.

Transactions with foreign branches or agencies of foreign banks (excluding central banks) and other private institutions should be reported opposite the country in which the foreign branch or agency is located.

Transactions with official international and regional organizations, even though located in the United States, should be reported opposite the classification "International," "European," "Latin American," "Asian," "African" or "Middle Eastern" regional, as appropriate. The regional classifications cover organizations which have a regional center of interest. The "International" classification covers all other organizations of an international character. EXCEPTION: The Bank for International Settlements and the European Fund, for purposes of this report, should be reported opposite the classification "Other Europe."

Transactions executed by persons in the United States on behalf of, for the account of, or for the benefit of "foreigners," should be reported opposite the countries in which the "foreigners" are domiciled.

Transactions in securities denominated in a foreign currency should be reported opposite the country of domicile of the "foreigner" involved in the transaction, and not opposite the country in whose currency the securities are denominated.

H. REDEMPTION OF SECURITIES

1. Fiscal agents for foreign issuers should report as purchases by "foreigners" the redemption by them of called or matured foreign securities and sinking fund purchases of foreign securities in the United States. When such fiscal agents receive these foreign securities directly from "foreigners" (rather than from banks, banking institutions, brokers and dealers located in the United States) such fiscal agents should, in addition, report these redemptions for the account of "foreign" beneficiaries as sales by "foreigners." Banks, banking institutions, brokers, and dealers presenting called or matured securities (foreign or domestic) to fiscal agents for redemption in the United States for the account of "foreign" beneficiaries should report such redemptions as sales by "foreigners."
2. Fiscal agents or trustees for domestic securities should report as sales by "foreigners" such securities presented for redemption directly by "foreigners," including their foreign correspondents or branches or head offices outside the United States. Sinking fund purchases abroad of such securities should also be included. Conversely, all called or matured securities (foreign or domestic) presented by you for redemption abroad for your own account or for the account of your domestic customers should be reported as purchases by "foreigners."
3. Conversions of debt obligations into domestic stocks should not be reported as redemptions. Such conversions should be reported only in Memorandum II.

I. TRANSACTIONS IN FOREIGN ARBITRAGE ACCOUNTS

Purchases or sales of securities executed in the United States for arbitrage accounts in which you participate as a principal jointly with a "foreigner" should be reported opposite the country in which the "foreigner" is located. For example, a sale of securities in New York for a joint account with a Canadian resident should be entered as a sale opposite Canada; the corresponding purchase of securities in Canada for the joint account should not be reported.

J. TRANSACTIONS IN TRUST ACCOUNTS

The following should be reported: (a) Transactions in "long-term" securities held by domestic trustees in trusts created by foreign insurance companies. (Branches or agencies located in the United States of foreign insurance companies are not "foreigners" and, accordingly, transactions in securities held in trusts created by such branches or agencies should not be reported.) (b) Transactions in "long-term" securities held by a domestic trustee in trusts created by other foreign companies or foreign governments, for example, in trusts created under indentures relating to the issuance or amortization of foreign dollar bonds or payment of interest thereon.

NOTE: Transactions in "long-term" securities held by a domestic trustee in trusts created by individual "foreign" persons are not reportable on this form.

K. EXCHANGE OF "LONG-TERM" SECURITIES

For purposes of this report, the acquisition for "foreign" account of "long-term" securities in exchange for "short-term" securities or other assets should be reported as a purchase of "long-term" securities by "foreigners"; and the disposition for "foreign" account of "long-term" securities against an acquisition of "short-term" securities or other assets should be reported as a sale of "long-term" securities by "foreigners." Do not include conversions of domestic or foreign debt obligations into domestic stocks. Conversions are reportable only in Memorandum II.

L. TRANSACTIONS EXECUTED IN FOREIGN CURRENCIES

Transactions reported on this form, if executed in foreign currencies, should be entered in terms of the dollar equivalent, being converted at the spot rates of exchange prevailing either when the transactions were executed or at the close of the last business day of the month.

M. REPORTING OF CONVERSION OF DOMESTIC OR FOREIGN DEBT OBLIGATIONS INTO DOMESTIC STOCKS BY "FOREIGNERS"

Conversion agents should report in Memorandum II the conversion into domestic stocks by them of debt obligations received directly from "foreigners," including their foreign correspondents, branches, and head offices outside the United States. Banks, banking institutions, brokers, and dealers presenting debt obligations for conversion into domestic stocks in the United States for the account of "foreign" beneficiaries should report such conversions in Memorandum II. Amounts reported should represent the total amount of conversions during the month of the report date. These amounts should not be reported elsewhere on this form as purchases or sales of securities.

PART II—SPECIFIC INSTRUCTIONS RELATING TO PARTICULAR COLUMNS ON FORM S

(See References on Report Form to Instructions (a) Through (I) Below.)

- (a) The following are not to be regarded as "foreign countries" for purposes of this report: American Samoa, the Canal Zone, Guam, Midway Island, Puerto Rico, the Virgin Islands, and Wake Island.
- (b) Report under this heading transactions in securities of the United States Government, Federal Financing Bank, governmental agencies, states and municipalities, and the securities of corporations chartered in the United States. Do not include securities issued by official international or regional organizations, even though located in the United States.
- (c) Report under this heading transactions in securities of foreign central governments and political subdivisions, and securities of corporations or similar organizations chartered in foreign countries, and of international and regional organizations as defined in Part I, section E.3(e) above, even though such securities may be payable in United States dollars. Classify transactions in rights, warrants, options, and scrip as they pertain to stocks or bonds. Include transactions in foreign stocks evidenced by the issuance by, or surrender to, Depositories of American Depositary Receipts (A.D.R.'s).
- (d) Report under this heading transactions in securities issued by the Department of the Treasury and by the Federal Financing Bank. (Transactions in these securities with "foreign official institutions" are also reportable in columns 1 and 2 of Memorandum I.)

-4-

(e) Report under this heading transactions in securities issued by corporations and other agencies of the U.S. Government and by Federally-sponsored agencies. (Transactions in these securities with "foreign official institutions" are also reportable in columns 3 and 4 of Memorandum I.)

(f) Report under this heading transactions in debt securities issued by private corporations and by state and local governments. (Transactions in these securities with "foreign official institutions" are also reportable in columns 5 and 6 of Memorandum I.)

(g) Report under this heading transactions in stocks issued by private corporations. (Transactions in these securities with "foreign official institutions" are also reportable in columns 7 and 8 of Memorandum I.)

(h) Report in this Memorandum section transactions in "long-term" domestic securities as described in (d), (e), (f), and (g) above for the account of "foreign official institutions." List each foreign country and each international and regional organization, and the code number shown for such area in the Geographical Classification provided by the Treasury Department, for which transactions in domestic securities were effected for the account of "foreign official institutions."


(i) Report under this heading, by foreign country and code number, the conversion into domestic stock of foreign-held debt issues of firms incorporated under the laws of the United States, whether or not the issues were initially offered only to "foreigners."

(j) Report under this heading, by foreign country and code number, the conversion into domestic stock of foreign-held debt issues of firms created or organized under the laws of a foreign country, including the issues of foreign subsidiaries or other allied organizations of a firm incorporated under the laws of the United States.

(k) Report under this heading the aggregate market value of the domestic stock issued as of close of business on the day of the conversion.

(l) Report under this heading the aggregate dollar amounts of any cash payments associated with the conversion of debt obligations into domestic stocks.

Appendix E

Customs Use Only Control No. _____ 31 USC 1101; 31 CFR 103.23 and 103.25 Please Type or Print		 DEPARTMENT OF THE TREASURY UNITED STATES CUSTOMS SERVICE REPORT OF INTERNATIONAL TRANSPORTATION OF CURRENCY OR MONETARY INSTRUMENTS		Form Approved O.M.B. No. 48-R0838 This form is to be filed with the United States Customs Service Privacy Act Notification on reverse	
PART I - FOR INDIVIDUAL DEPARTING FROM OR ENTERING THE UNITED STATES					
1. NAME (Last or family, first and middle)		2. IDENTIFYING NO. (See instructions)		3. DATE OF BIRTH (Mo./Da./Yr.)	
4. PERMANENT ADDRESS IN UNITED STATES OR ABROAD				5. OF WHAT COUNTRY ARE YOU A CITIZEN/SUBJECT?	
6. ADDRESS WHILE IN THE UNITED STATES				7. PASSPORT NO. & COUNTRY	
8. U.S. VISA DATE		9. PLACE UNITED STATES VISA WAS ISSUED		10. IMMIGRATION ALIEN NO. (If any)	
11. CURRENCY OR MONETARY INSTRUMENT WAS: (Complete 11A or 11B)					
A. EXPORTED			B. IMPORTED		
Departed From: (City in U.S.)		Arrived At: (Foreign City/Country)		From: (Foreign City/Country)	
				At: (City in U.S.)	
PART II - FOR PERSON SHIPPING, MAILING OR RECEIVING CURRENCY OR MONETARY INSTRUMENTS					
12. NAME (Last or family, first and middle)		13. IDENTIFYING NO. (See instructions)		14. DATE OF BIRTH (Mo./Da./Yr.)	
15. PERMANENT ADDRESS IN UNITED STATES OR ABROAD				16. OF WHAT COUNTRY ARE YOU A CITIZEN/SUBJECT?	
17. ADDRESS WHILE IN THE UNITED STATES				18. PASSPORT NO. & COUNTRY	
19. U.S. VISA DATE		20. PLACE UNITED STATES VISA WAS ISSUED		21. IMMIGRATION ALIEN NO. (If any)	
22. CURRENCY OR MONETARY INSTRUMENTS DATE SHIPPED		23. CURRENCY OR MONETARY INSTRUMENTS DATE RECEIVED		24. IF THE CURRENCY OR MONETARY INSTRUMENT WAS MAILED, SHIPPED, OR TRANSPORTED COMPLETE BLOCKS A AND B.	
		<input type="checkbox"/> Shipped To <input type="checkbox"/> Received From		A. Method of Shipment (Auto, U.S. Mail, Public Carrier, etc.)	
				B. Name of Transporter/Carrier	
PART III - CURRENCY AND MONETARY INSTRUMENT INFORMATION (SEE INSTRUCTIONS ON REVERSE) (To be completed by everyone)					
25. TYPE AND AMOUNT OF CURRENCY/MONETARY INSTRUMENTS			Value in U.S. Dollars		
Coins <input type="checkbox"/> A. ▶ \$			26. IF OTHER THAN U.S. CURRENCY IS INVOLVED, PLEASE COMPLETE BLOCKS A AND B. (SEE SPECIAL INSTRUCTIONS)		
Currency <input type="checkbox"/> B. ▶			A. Currency Name		
Other instruments (Specify Type) <input type="checkbox"/> C. ▶			B. Country		
(Add lines A, B and C) TOTAL AMOUNT ▶ \$					
PART IV - GENERAL - TO BE COMPLETED BY ALL TRAVELERS, SHIPPERS AND RECIPIENTS					
27. WERE YOU ACTING AS AN AGENT, ATTORNEY OR IN CAPACITY FOR ANYONE IN THIS CURRENCY OR MONETARY INSTRUMENT ACTIVITY? (If "Yes" complete A, B and C) <input type="checkbox"/> Yes <input type="checkbox"/> No					
PERSON IN WHOSE BEHALF YOU ARE ACTING ▶		A. Name		B. Address	
				C. Business activity occupation or profession	
Under penalties of perjury, I declare that I have examined this report, and to the best of my knowledge and belief it is true, correct and complete.					
28. NAME AND TITLE		29. SIGNATURE		30. DATE	

General Instructions

This report is required by Treasury Department regulations (31 Code of Federal Regulations 103).

Who Must File. — Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, shipped or received currency or other monetary instruments in an aggregate amount exceeding \$5,000 on any one occasion from the United States to any place outside the United States, or into the United States from any place outside the United States.

A TRANSFER OF FUNDS THROUGH NORMAL BANKING PROCEDURES WHICH DOES NOT INVOLVE THE PHYSICAL TRANSPORTATION OF CURRENCY OR MONETARY INSTRUMENTS IS NOT REQUIRED TO BE REPORTED.

Exceptions. — The following persons are not required to file reports: (1) a Federal reserve bank, (2) a bank, a foreign bank, or a broker or dealer in securities in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier, (3) a commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned, (4) a person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier, (5) a common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers, (6) a common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper, (7) a traveler's check issuer or its agent in respect to the transportation of traveler's checks prior to their delivery to selling agents for eventual sale to the public, nor by (8) a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

When and Where to File:

A. Recipients. — Each person who receives currency or other monetary instruments shall file Form 4790, within 30 days after receipt, with the Customs officer in charge at any port of entry or departure or by mail with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, D.C. 20229.

B. Shippers or Mailing. — If the currency or other monetary instrument does not accompany the person entering or departing the United States, Form 4790 may be filed by mail on or before the date of entry, departure, mailing, or shipping with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, D.C. 20229.

C. Travelers. — Travelers carrying currency or other monetary instruments with them shall file Form 4790 at the time of entry into the United States or the time of departure from the United States with the Customs officer in charge at any Customs port of entry or departure.

An additional report of a particular transportation, mailing, or shipping of currency or other monetary instruments, is not required if a complete and truthful report has already been filed. However, no person otherwise required to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed. Forms may be obtained from any United States Customs Service office.

PENALTIES. — Civil and criminal penalties, including under certain circumstances a fine of not more than \$500,000 and imprisonment of not more than five years, are provided for failure to file a report, supply information, and for filing a false or fraudulent report. In addition, the currency or monetary instrument may be subject to seizure and forfeiture. See sections 103.47, 103.48 and 103.49 of the regulations.

Definitions

Bank. — Each agent, agency, branch or office within the United States of a foreign bank and each agency, branch or office within the United States of any person doing business in one or more of the capacities listed: (1) a commercial bank or trust company organized under the laws of any state or of the United States; (2) a private bank; (3) a savings and loan association or a building and loan association organized under the laws of any state or of the United States; (4) an insured institution as defined in section 401 of the National Housing Act; (5) a savings bank, industrial bank or other thrift institution; (6) a credit union organized under the laws of any state or of the United States; and (7) any other organization chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a state.

Foreign Bank. — A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

Broker or Dealer in Securities. — A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

IDENTIFYING NUMBER. — Individuals should enter their social security number, if any. However, aliens who do not have a social security number should enter passport or alien registration number. All others should enter their employer identification number.

Investment Security. — An instrument which: (1) is issued in bearer or registered form; (2) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; (3) is either one of a class or series or by its terms is divisible into a class or series of instruments; and (4) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

Monetary Instruments. — Coin or currency of the United States or of any other country, travelers' checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments (except warehouse receipts or bills of lading) in bearer form or other in such form that title thereto passes upon delivery. The term includes bank checks, travelers' checks and money orders which are signed but on which the name of the payee has been omitted, but does not include bank checks, travelers' checks or money orders made payable to the order of a named person which have not been endorsed or which bear restrictive endorsements.

Person. — An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, and all entities cognizable as legal personalities.

Special Instructions

You should complete each line which applies to you. Part II, — Line 22, Enter the exact date you shipped or received currency or the monetary instrument(s). Line 23, Check the applicable box and give the complete name and address of the shipper or recipient. Part III, — Line 26, If currency or monetary instruments of more than one country is involved, attach a schedule showing each kind, country, and amount.

PRIVACY ACT NOTIFICATION

Pursuant to the requirements of Public Law 93-579, (Privacy Act of 1974), notice is hereby given that the authority to collect information on Form 4790 in accordance with 5 U.S.C. 552(a)(3) is Public Law 91-508; 31 U.S.C. 1101; 5 U.S.C. 301; Reorganization Plan No. 1 of 1950; Treasury Department No. 185, revised, as amended; 31 CFR 103.

The principal purpose for collecting the information is to ensure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of the Customs Service and any other constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the Federal Government upon the request of the head of such department or agency.

Disclosure of this information is mandatory. Failure to provide all or any part of the requested information may subject the currency or monetary instruments to seizure and forfeiture, as well as subject the individual to civil and criminal liabilities.

Disclosure of the social security number is mandatory. The authority to collect this number is 31 CFR 103.25. The social security number will be used as a means to identify the individual who files the record.

Appendix F

Form Approved
OMB No. 48-RO-546Department of the Treasury
Form 90-22.1 (9-78)
SUPERSEDES ALL PREVIOUS
EDITIONSREPORT OF FOREIGN BANK
AND FINANCIAL ACCOUNTS

OFFICIAL USE ONLY

For the calendar year 19.....

This form should be used to report financial interest in or signature authority or other authority over one or more bank accounts, securities accounts, or other financial accounts in foreign countries as required by Department of the Treasury Regulations (31 CFR 103). You are not required to file a report if the aggregate value of the accounts did not exceed \$1,000. Check all appropriate boxes. SEE INSTRUCTIONS ON BACK FOR DEFINITIONS.

1. Name (Last, First, Middle)		2. Social security number or employer identification number if other than individual	3. Name in item 1 refers to <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Fiduciary
4. Address (Street, City, State, Country, ZIP)			
5. <input type="checkbox"/> I had signature authority or other authority over one or more foreign accounts, but I had no "financial interest" in such accounts (see instruction J). Indicate for these accounts:			
(a) Name and social security number or taxpayer identification number of each owner			
(b) Address of each owner			
(Do not complete item 9 for these accounts)			
6. <input type="checkbox"/> I had a "financial interest" in one or more foreign accounts owned by a domestic corporation, partnership or trust which is required to file Form 90-22.1. (See instruction L). Indicate for these accounts:			
(a) Name and taxpayer identification number of each such corporation, partnership or trust			
(b) Address of each such corporation, partnership or trust			
(Do not complete item 9 for these accounts)			
7. <input type="checkbox"/> I had a "financial interest" in one or more foreign accounts, but the total maximum value of these accounts (see instruction I) did not exceed \$10,000 at any time during the year. (If you checked this box, do not complete item 9).			
8. <input type="checkbox"/> I had a "financial interest" in 25 or more foreign accounts. (If you checked this box, do not complete item 9.)			
9. If you had a "financial interest" in one or more but fewer than 25 foreign accounts which are required to be reported, and the total maximum value of the accounts exceeded \$10,000 during the year (see instruction I), write the total number of those accounts here: Complete items (a) through (f) below for one of the accounts and attach a separate Form 90-22.1 for each of the others. Items 1, 2, 3, 9, and 10 must be completed for each account. Check here if this is an attachment. <input type="checkbox"/>			
(a) Name in which account is maintained		(b) Name of bank or other person with whom account is maintained	
(c) Number and other account designation, if any		(d) Address of office or branch where account is maintained	
(e) Type of account. (If not certain of English name for the type of account, give the foreign language name and describe the nature of the account. Attach additional sheets if necessary.) <input type="checkbox"/> Bank Account <input type="checkbox"/> Securities Account <input type="checkbox"/> Other (specify)			
(f) Maximum value of account (see instruction I) <input type="checkbox"/> Under \$10,000 <input type="checkbox"/> \$10,000 to \$50,000 <input type="checkbox"/> \$50,000 to \$100,000 <input type="checkbox"/> Over \$100,000			
10. Signature		11. Title (Not necessary if reporting personal account)	12. Date

PRIVACY ACT NOTIFICATION

Pursuant to the requirements of Public Law 93-579, (Privacy Act of 1974), notice is hereby given that the authority to collect information on Form 90-22.1 in accordance with 5 U.S.C. 552(a)(3) is Public Law 91-508; 31 U.S.C. 1121; 5 U.S.C. 301, 31 CFR Part 103.

The principal purpose for collecting the information is to assure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of any constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the Federal Government upon the request of the head of such department or agency for use in a criminal, tax, or regulatory investigation or proceeding.

Disclosure of this information is mandatory. Civil and criminal penalties, including under certain circumstances a fine of not more than \$500,000 and imprisonment of not more than five years, are provided for failure to file a report, supply information, and for filing a false or fraudulent report.

Disclosure of the social security number is mandatory. The authority to collect this number is 31 CFR 103. The social security number will be used as a means to identify the individual who files the report.

INSTRUCTIONS

A. Who Must File a Report—Each United States person who has a financial interest in or signature authority or other authority over bank, securities, or other financial accounts in a foreign country, which exceeded \$1,000 in aggregate value at any time during the calendar year, must report that relationship each calendar year by filing Form 90-22.1 with the Department of the Treasury on or before June 30, of the succeeding year.

An officer or employee of a commercial bank which is subject to the supervision of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation need not report that he has signature or other authority over a foreign bank, securities or other financial account maintained by the bank unless he has a personal financial interest in the account.

In addition, an officer or employee of a domestic corporation whose securities are listed upon national securities exchanges or which has assets exceeding \$1 million and 500 or more shareholders of record need not file such a report concerning his signature authority over a foreign financial account of the corporation, if he has no personal financial interest in the account and has been advised in writing by the chief financial officer of the corporation that the corporation has filed a current report which includes that account.

B. United States Person—The term "United States person" means (1) a citizen or resident of the United States, (2) a domestic partnership, (3) a domestic corporation, or (4) a domestic estate or trust.

C. When and where to file—This report shall be filed on or before June 30 each calendar year with the Department of the Treasury, Post Office Box 28309, Central Station, Washington, D.C., 20005.

D. Account in a Foreign Country—A "foreign country" includes all geographical areas located outside the United States, Guam, Puerto Rico, and the Virgin Islands.

Report any account maintained with a bank (except a military banking facility as defined in instruction E) or broker or dealer in securities that is located in a foreign country, even if it is a part of a United States bank or other institution. Do not report any account maintained with a branch, agency, or other office of a foreign bank of other institution that is located in the United States, Guam, Puerto Rico, and the Virgin Islands.

E. Military Banking Facility—Do not consider as an account in a foreign country, an account in an institution known as a "United States military banking facility" (or "United States military finance facility") operated by a United States financial institution designated by the United States Government to serve U.S. Government installations abroad, even if the United States military banking facility is located in a foreign country.

F. Bank, Financial Account—The term "bank account" means a savings, demand, checking, deposit, loan or any other account maintained with a financial institution or other person engaged in the business of banking. It includes certificates of deposit.

The term "securities account" means an account maintained with a financial institution or other person who buys,

sells, holds, or trades stock or other securities for the benefit of another.

The term "other financial account" means any other account maintained with a financial institution or other person who accepts deposits, exchanges or transmits funds, or acts as a broker or dealer for future transactions in any commodity on (or subject to the rules of) a commodity exchange or association.

G. Financial Interest—A financial interest in a bank, securities, or other financial account in a foreign country means an interest described in either of the following two paragraphs:

(1) A United States person has a financial interest in each account for which such person is the owner of records or has legal title, whether the account is maintained for his or her own benefit or for the benefit of others including non-United States persons, if an account is maintained in the name of two persons jointly, or if several persons each own a partial interest in an account, each of those United States persons has a financial interest in that account.

(2) A United States person has a financial interest in each bank, securities, or other financial account in a foreign country for which the owner of record or holder of legal title is: (a) a person acting as an agent, nominee, attorney, or in some other capacity on behalf of the U.S. person; (b) a corporation in which the United States person owns directly or indirectly more than 50 percent of the total value of shares of stock; (c) a partnership in which the United States person owns an interest in more than 50 percent of the profits (distributive share of income); or (d) a trust in which the United States person either has a present beneficial interest in more than 50 percent of the assets or from which the person receives more than 50 percent of the current income.

H. Signature or Other Authority Over an Account—

Signature Authority—A person has signature authority over an account if such person can control the disposition of money or other property in it by delivery of a document containing his or her signature (or his or her signature and that of one or more other persons) to the bank or other person with whom the account is maintained.

Other authority exists in a person who can exercise comparable power over an account by direct communication to the bank or other person with whom the account is maintained, either orally or by some other means.

I. Account Valuation—For items 7, 9, and instruction A, the maximum value of an account is the largest amount of currency and non-monetary assets that appear on any quarterly or more frequent account statement issued for the applicable year. If periodic account statements are not so issued, the maximum account asset value is the largest amount of currency and non-monetary assets in the account at any time during the year. Convert foreign currency by using the official exchange rate at the end of the year. In valuing currency of a country that uses multiple exchange rates, use the rate which would apply if the currency in the account were converted into United States dollars at the close of the calendar year.

The value of stock, other securities or other non-monetary assets in an account reported on Form 90-22.1 is the fair market value at the end of the calendar year, or if withdrawn from the account, at the time of the withdrawal.

For purposes of items 7, 9, and instruction A, if you had a financial interest in more than one account, each account is to be valued separately in accordance with the foregoing two paragraphs.

If you had a financial interest in two or more but fewer than 25 accounts, and you are unable to determine whether the maximum value of these accounts exceeded \$10,000 at any time during the year, check item 9 (do not check item 7) and complete item 9 for each of these accounts.

J. United States Persons with Authority Over but No Interest in an Account—Except as provided in instruction A and the following paragraph, you must state the name, address, and identifying number of each owner of an account over which you had authority, but if you check item 5 for more than one account of the same owner, you need identify the owner only once.

If you check item 5 for one or more accounts in which no United States person had a financial interest, you may state on the first line of this item, in lieu of supplying information about the owner, "No U.S. person had any financial interest in the foreign accounts." This statement must be based upon the actual belief of the person filing this form after he or she has taken reasonable measures to ensure its correctness.

If you check item 5 for accounts owned by a domestic corporation and its domestic and/or foreign subsidiaries, you may treat them as one owner and write in the space provided, the name of the parent corporation, followed by "and related entities," and the identifying number and address of the parent corporation.

K. Consolidated Reporting—

A corporation which owns directly or indirectly more than 50 percent interest in one or more other entities will be permitted to file a consolidated report on Form 90-22.1, on behalf of itself and such other entities provided that a listing of them is made part of the consolidated report. Such reports should be signed by an authorized official of the parent corporation.

If the group of entities covered by a consolidated report has a financial interest in 25 or more foreign financial accounts, the reporting corporation need only note that fact on the form; it will, however, be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

L. Avoiding Duplicate Reporting—If you had financial interest (as defined in instruction G(2)(c), (c) or (d)) in one or more accounts which are owned by a domestic corporation, partnership or trust which is required to file Form 90-22.1 with respect to these accounts in lieu of completing item 9 for each account you may check item 6 and provide the required information.

M. Providing Additional Information—Any person who does not complete item 8, shall when requested by the Department of the Treasury provide the information called for in item 9.

N. Signature (item 10)—This report must be signed by the person named in item 1. If the report is being filed on behalf of a partnership, corporation, or fiduciary, it must be signed by an authorized individual.

O. Penalties—For criminal penalties for failure to file a report, supply information, and for filing a false or fraudulent report see 31 U.S.C. 1056, 31 U.S.C. 1059, and 18 U.S.C. 1001.

